United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

ORIGINAL

76-7600

United States Court of Appeals

FOR THE SECOND CIRCUIT

J. P. FOLEY & COMPANY, INC., JOHN P. FOLEY, JR., ANNE A. FOLEY, and ANITA SALISBURY,

Plaintiffs-Appellants,

against

NEW YORK STOCK EXCHANGE, and AMERICAN STOCK EXCHANGE,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

Volume II—Pages A626 to A1206

UNITED STATES COURT OF APPEALS
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J.P. FOLEY & COMPANY, INC.

v. 71 Civil 2[illegible]27

NEW YORK STOCK EXCHANGE and
AMERICAN STOCK EXCHANGE

June 3, 1976
10:12 A.M.

Trial Resumed

(In open court - jury present)

THE COURT: Good morning, ladies and gentlemen.

MR. FRIED: Your Honor, I call Mr. Deignan.

J O H N J . D E I G N A N , called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FRIED:

Q Mr. Deignan, where do you live?

A 214 Beaumont Court, Ridge, New York.

Q What is your present occupation or are you retired?

A I am retired.

Q Were you formerly employed by the New York Stock Exchange?

A I was.

Q For how long a period of time?

A Forty-six years.

Q Do you receive a pension from the New York Stock Exchange?

A Yes.

Q What was the title or position you held with the New York Stock Exchange -- I'm not going back all the time you were there -- for the past five years prior to the time you retired?

A Supervising Coordinator during the earlier part of those five years and Chief Hearing Officer for the last three, approximately.

Q What were your duties as a Supervising Coordinator?

A To review and supervise the review of various documents submitted to the Exchange by its member organizatio relating to their operations and capital situation.

Q For how long a period of time did you act as a Supervising Coordinator?

A Well, in effect, right from the very beginning.

The title changed from Coordinator to Senior Coordinator and Supervising Coordinator, but it was essentially the same function.

Q In 1967, '68, '69 and '70 was your title that of Supervising Coordinator?

A Beginning in August of '68, that was when I undertook that function.

THE COURT: Until when?

THE WITNESS: Until July of '71.

THE COURT: You were present at the trial yesterday, is that right?

THE WITNESS: Yes.

THE COURT: And you are aware of the dates when Blair was liquidated?

THE WITNESS: Yes.

THE COURT: And you were Supervising Coordinator throughout Blair's problems and its liquidation, is that right?

THE WITNESS: Yes.

Q When did you begin to work on the Blair affairs, Mr. Deignan?

A When I became a coordinator, which was late in August of 1968.

Q As a Supervising Coordinator, do you have any

staff to work with? Do you have any assistant, for example?

A At that period, in the early period, I had one. It was gradually increased to three.

Q Who are these assistants that you had during that period?

A Initially it was a man named Richard Greves, and he was replaced in this period by a man named Dennis Dirks.

Q Mr. Deignan, what was the particular division that you were working with at the Stock Exchange?

A Working with?

Q Yes. There are a number of divisions in the New York Stock Exchange, are there not, of the Department of Member Firms?

A Yes.

Q How many departments are there in the New York Stock Exchange, do you know?

MR. BROOKS: Is the question directed to the period of '68 through '70?

MR. FRIED: Yes.

THE COURT: Yes, apparently.

MR. FRIED: May it be understood, your Honor, all of the questions I'm asking now relate only to the

period between '68 and the end of 1970.

THE COURT: Very good.

A I would say that there were six or seven departments.

Q There was a department known as the Department of Member Firms.

A Right.

Q And that particular department had three divisions, is that correct?

A Well, yes, at least three, I would say.

Q There was a Finance Division?

A Yes.

Q An Examiner's Division?

A Yes.

Q A Documents Division?

A Yes.

Q Do you know of any other divisions in the Department of Member Firms?

A There was a Registration Division, as I recall it. There was a Division of Commissions and Quotations.

Q Any others?

A There was a Conduct Division, and there was a Division of Complaints and Inquiries. I think that's it.

THE COURT: This was all within the Member

Firm Department?

THE WITNESS: Yes, sir.

Q Is it fair to state that all of the regulations, supervision or surveillance of member firms comes under the Department of Member Firms?

A Yes.

Q What particular division would the function of Supervising Coordinator come in?

A It really wasn't attached to any division. It was a unit in itself.

Q Was that a separate division, then, Coordinating Division of the Department of Member Firms?

A Yes, I would say so.

Q As the Supervising Coordinator, were you familiar with the types of reports that were to be filed?

A Yes.

Q I understand there is a Special Operations Questionnaire that is to be filed by every member of the Stock Exchange, is that right?

A Yes.

Q And would you tell us when those reports are required to be filed?

A In this period I believe they were required to be filed quarterly by some firms and monthly by other

firms.

Q And was there a reason why some firms were required to file on a monthly basis?

A Well, those were firms that we felt should be surveilled more closely because of possible operations problems.

Q Where there were operations problems, then those firms were required to file on a monthly basis?

A Yes.

Q Do you recall that Blair was required to file monthly reports sometime in the latter part of '68 and the early part of '69?

A I believe that is so, yes.

Q And do you recall that Blair had security differences or unaccounted securities as the reason why they were required to file monthly reports?

A Yes, I would say that was the reason.

THE COURT: What do you mean by "security differences"?

THE WITNESS: Unaccounted for securities, short differences as the term is used, where securities supposedly in their possession or under their control were not.

THE COURT: Or vice versa?

THE WITNESS: Right. Sometimes on the long side.

THE COURT: They were long securities but you just do not know where they are.

THE WITNESS: Right.

Q Mr. Deignan, next to the Special Operations Questionnaire, were the member firms required to file financial questionnaires?

A Yes.

Q What is the difference between, just generally, the Special Operations Questionnaire and the Financial Questionnaire?

A Well, the Financial Questionnaire deals more in depth with the finances of the member firm. It has nothing much in there about operations.

Q Does that deal with the finances of the organization -- of the member, rather, that was reporting?

A Yes, the member.

Q How often were the Financial Questionnaires required to be filed?

A Three a year. Two could be prepared and filed by the firm itself. The third one was required to be filed by the firm's outside auditors.

Q Now, were there also Special Financial Questionnaires to the Financial Questionnaires?

A It's the same thing, sir.

Q Are they both the same?

A Yes.

MR. FRIED: May I have Exhibit 28?

THE COURT: Mr. Deignan, I think sometimes they are called Special Financial Questionnaires. They are not special in the sense that they are sent anything unusual about them?

THE WITNESS: There is nothing special about them. The two that the firm compiles themselves for some reason or other are called Special Financial Questionnaires.

THE COURT: I see, but if Blair submitted answers to Special Questionnaires, that was not unusual. Other firms were required to do the same thing.

THE WITNESS: Every firm was, yes, sir.

Q Mr. Deignan, I show you Exhibit 28. On top of that it says "Blair & Co., Inc. Answers to Special Financial Questionnaire."

Is that the same as the ordinary questionnaire that you just talked about?

A Yes, sir, it is.

Q Were there any other types of reports that were required to be filed by the member firms?

A Somewhere in that period a fail report was initiated. Its purpose was to indicate the amount of fails to deliver for each member firm.

Q Will you explain those terms: fail to receive

and fail to deliver.

A Well, fail to receive would involve a situation where the reporting firm has made a contract to purchase securities, and those securities haven't been received by that firm, hence "fail to receive".

Fail to deliver is the contra side, where the firm has sold securities but has failed to deliver them to the buying side.

Q Now, you mentioned, in connection with the financial questionnaires that three were required a year, and two of them could be prepared by the inside accounting department of the member firm.

A Right.

Q One was required to be filed by an outside, an independent firm of accountants?

A Yes, sir.

Q Did you ever hear of the term "surprise audit"?

A Yes.

Q Is a surprise audit different from the audit which I'm talking about, as the audit that's made by an independent, outside accounting firm?

A That's a surprise audit.

Q That's the surprise audit?

A Yes.

Q Under the Regulations of the New York Stock Exchange, are the accounting firms required to register or in some way file any papers with the New York Stock Exchange -- accounting firms that do accounting for member firms?

A Not that I know of, other than the answers to the questionnaire itself.

Q And when an accounting firm makes a surprise audit, under the Regulations, are they supposed to notify their client that they are going to make the audit?

A No.

Q As a matter of fact, the Regulations require them not to inform the member firm about the time that they are going to start their audit?

A Yes.

THE COURT: Am I correct that if the accounting firm is to be an independent one, it is not the regular accounting firm of the member that's being audited, or is it?

THE WITNESS: It would be the same one.

THE COURT: It would be the same?

THE WITNESS: Ordinarily, yes.

THE COURT: I understand, that simply means not

accountants in the employ of the member firm.

THE WITNESS: That's right.

THE COURT: It is their outside accountants but making a surprise audit in the sense that it is not known when the audit will commence, is that right?

THE WITNESS: That's right, sir.

Q Mr. Deignan, did it come to your attention in the early part of 1969 that Blair & Company and Schwabacher had merged into one firm?

A Yes. I knew that.

Q Didn't the question of having a split audit come up at that time?

A Yes. I believe it did.

Q You understood the term "split audit" to mean that they could have the audit of the Schwabacher books separate and apart from the books of Blair & Company, is that right?

A That was my understanding, yes.

Q In order to permit a split audit, is the permission of the Stock Exchange obtained by a member firm?

A It's my understanding that it is required, yes.

Q I show you Plaintiffs' Exhibit 19-B for

identification, Mr. Deignan and ask you if you can identify that memorandum as having been issued by Mr. Bishop?

A Did you say "issued by Mr. Bishop", sir?

Q I believe that's what it says.

MR. BROOKS: Your Honor, I think we have what Mr. Fried is referring to designated as Exhibit 19-B-2.

THE COURT: Well, is it the same paper or something different?

MR. FRIED: It says 19-B-2. I am sorry. It's the same thing.

THE COURT: That will not change the witness' answer.

Do you know --

A It is directed to Mr. Bishop from Mr. McChesney.

Q Who is Mr. Bishop and who is Mr. McChesney?

A Mr. Bishop was the officer in charge of member firms and Mr. McChesney was the chief examiner.

Q The fact that your name is on that means that you got a copy?

A Yes.

Q Looking at the document next to it, did you also receive that document?

A I don't recall that I did, sir, no.

Q I show you the last page of that and ask you if you can reocgnize the signature of the man who made that memorandum.

THE COURT: Is that the annexed document?

MR. FRIED: That's annexed to 19-B-2.

A It's signed Lloyd McChesney.

Q Do you recognize that as his signature?

A No. I don't. I am not familiar with his signature.

MR. FRIED: I offer 19-B, with the document annexed.

MR. BROOKS: No objection.

THE COURT: It is received as 19-B-2, isn't it?

MR. FRIED: Yes.

(Plaintiffs' Exhibit 19-B-B for identification was received in evidence)

MR. FRIED: May I just read one paragraph here?

THE COURT: Does it have a title so the jury and I can understand it?

MR. FRIED: It says "Memorandum": On the to page is "New York Stock Exchange". It says "Memorandum, May 23, 1969."

(Mr. Fried read to the jury from Plaintiffs' Exhibit 19-B-2 in evidence)

Q Did you have anything to do with the question of whether or not Schwabacher and Blair would file separate audits?

A No, I didn't.

MR. FRIED: The memorandum annexed to it, for the information of the Court and the jury and all concerned, is dated May 19, 1969. It is on the printed form.

It says: "New York Stock Exchange, Memorandum to Robert M. Bishop from L.W. Mc Chesney. Subject: Arthur Young & Company request for separate audits of Schwabacher & Co. and Blair & Co., Inc."

(Mr. Fried continued to read to the jury from Plaintiffs' Exhibit 19-B-2)

Q Mr. Deignan, did the question of an unsatisfactory report come up for discussion in May of 1969, as far as you were concerned?

A No.

Q Mr. Deignan, I am going to show you four documents which have been marked as Exhibits 19-J, K, L and M for identification, and ask you if you can tell by looking at these documents if they are part of the records

of the New York Stock Exchange.

MR. BROOKS: Your Honor, we will stipulate that these exhibits are part of the records of the New York Stock Exchange.

THE COURT: Very well.

MR. FRIED: I will offer them in evidence at this time.

MR. BROOKS: No objection.

THE COURT: All right.

(Plaintiffs' Exhibits 19-J, K, L and M for identification were received in evidence)

xxxx

Q Mr. Deignan, I direct your attention now to Exhibit 19-M, which is in evidence, and ask you if it is not a fact that you made that memorandum yourself.

A Yes, sir. It bears my initials.

Q That memorandum is on the -- on ordinary white paper; is that correct? There is no particular form involved there.

A No. It's just plain white paper.

Q It is dated January 16, 1970 and at that time you said "At the coordinators' meeting this afternoon" -- will you tell us what coordinators' meeting refers to?

A Well, they were weekly meetings that were held, at which the five supervisor coordinators were

present, along, usually, with Mr. Bishop and/or Mr. Stock, sometimes Mr. McChesney.

Q Were there five supervising coordinators all together of the New York Stock Exchange?

A Yes.

Q And they meet weekly?

A Yes. With some few exceptions.

Q Now, in this memorandum, 19-M, did you accurately report the information contained in that memorandum to the coordinators' meeting on January 16, 1970?

A To the best of my knowledge I did, yes.

THE COURT: When did you say this is dated?

MR. FRIED: Dated January 16, 1970.

May I read this to the jury?

THE COURT: All right.

(Mr. Fried read to the jury from Plaintiffs' Exhibit 19-M in evidence)

2 Q That ratio of 1643 percent is approximately 16 1/2
3 to 1, is that right?
4 A Yes, sir.
5 Q Do you know at that time what the ratio was for
6 Blair & Company?
7 A For Blair & Company?
8 Q Let me ask you this question, Mr. Deignan. Wasn't
9 a special ratio imposed upon Blair & Company of 15 to 1 in
10 1969?
11 A I don't remember that, sir.
12 Q Mr. Deignan, I show you a letter dated March 13,
13 1969, Plaintiffs' Exhibit 27. It is addressed to Blair &
14 Company by Mr. G. H. Newman. Do you know who he was?
15 A Yes. He worked in the Finance Division at that
16 time, I believe.
17 Q Look at that letter, which refers to a 15 to 1
18 ratio, and tell me if it refreshes your recollection.
19 A No, I'm sorry, it doesn't.
20 Q Did you have any discussion with anyone at Blair
21 & Company during the year 1969 that the net capital ratio,
22 instead of 20 to 1, was to be 15 to 1?
23 A I have no recollection of any such discussion.
24 MR. FRIED: I'll continue on with reading the
25 memorandum, 19H:

"2) Firm suffered a loss of $3,567,000."

Q Was that as of September 26, 1969, do you know?

THE COURT: It has to be for a certain period, I assume.

A I can't tell from this what period it was. It was for the year up to 1969, September 1969 or whatever it was, at this time.

Q On January 16, 1970 you told the Coordinators meeting that Blair & Company had suffered a loss of $3,567,000. I assume that was for some prior month or period.

A Yes, I would say so.

Q The third item says, "Short differences - $2,904,00 (if charged to net capital would result in 4321% ratio)."

Do you remember that?

A Yes.

Q That would mean that if the short differences were not made up, the ratio would then be 43 to 1.

A That's right.

Q The fourth item says, "Cash Margin Deficiency of $6,230,000 on secured demand notes charged against capital."

What does that mean?

A Well, it means that the collateral behind the secured demand notes had depreciated so that it was less

than the face value of the note.

Q And the net result was that there was a cash margin deficiency of $6,230,000?

A That's right.

Q I assume that was also for sometime prior to January 16, 1970.

A I would say this was the figure as of September 26, 1969.

Q Thank you. The fifth item on this memorandum says, "Apparently $1,721,000 of capital has been or will be withdrawn by the end of January 1970 against injection of only 250,000."

Now, if that $1,721,000 was withdrawn, it would further increase the ratio of the capital to the investment, is that right?

A That would follow, sir, yes.

Q "Fred Stock said he had heard rumors that conversion of eastern offices to Midwest System had not proceeded smoothly. This was contrary to information I received in telephone conversations with James Rush and George Saks.

"It was determined that an examiner should be sent to the firm to check on current capital position and on the progress of the conversion."

Mr. Deignan, first of all, tell us what position

Messrs. James Rush and George Saks held with Blair & Company, if you know.

A I don't know the precise titles, but James Rush was in the operations area. I believe he was an officer. George Saks, if I recall it correctly, was primarily in the area of handling customer complaints and that sort of thing.

Q Can you nowrecall what information you received on the telephone from those gentlemen regarding the conversion?

A I can't remember specifically, no.

Q You said this was "contrary to information I receive in telephone conversations with James Rush and George Saks." Did they tell you that the conversion was going along smoothly?

A Apparently that was the reason for my statement.

Q On that very day, January 16, 1970, did you have any conversations with Mr. Arning?

A I have no recollection of any, no.

Q What position did Mr. Lee Arning have at the Stock Exchange?

A I believe he was at that time Vice President in charge of Operations.

Q Did Mr. Arning, either that day or within a day or two after that, tell you that he had talked with Mr. Ramsey

of Blair & Company and that Mr. Ramsey had stated the books and records of Blair were out of control?

A I have no recollection of that, no.

Q Did that information come to you at all during the month of January 1970?

A Not tha I can remember, sir, no.

Q Mr. Deignan, I show you a memorandum dated January 20, 1970 -- I am taking this out of order, your Honor -- Plaintiffs' Exhibit 58 for identification, and ask you if you recall having prepared that memorandum.

A Yes, I prepared that memorandum.

MR. FRIED: I offer that in evidence, your Honor.

THE COURT: It relates to Blair, I take it?

THE WITNESS: Yes.

MR. BROOKS: No objection.

THE COURT: All right. Received.

xxx (Plaintiffs' Exhibit 58 for identification was received in evidence.)

MR. FRIED: This is a short memorandum. I would like to read it. It is on the New York Stock Exchange printed form.

Q It is a memorandum to a Mr. Ed T. Carley?

A Carley, yes.

Q And it is from yourself?

A Yes.

Q The subject is Blair & Co., Inc.

"Recently Blair & Co., Inc. converted its eastern operations to the Midwest System. It is our understanding that conversion has not gone too smoothly and that the firm has an inordinate number of edits."

What does that mean, "edits"?

A Errors.

Q They are computer errors?

A Yes.

Q (Reading)

"In addition, a regular financial questionnaire answer as of the end of September 1969 indicated a capital ratio of over 1600% and there were indications that significant amounts of capital were withdrawn thereafter.

"Would you please send an examiner to Blair & Co., Inc. to check on these two areas."

Do you remember making that memorandum?

A Yes.

Q Do you remember, when you stated that the capital ratio was over 1600 percent, whether at that time the Stock Exchange had imposed a 15 to 1 ratio on Blair & Company?

A No, sir. That doesn't help me at all.

Q When the questionnaire indicated a capital ratio

of over 1600 percent, did that have any significance to you?

A No. The only significance it has in that memorandum is that they are at 1600 percent and with these proposed or actual withdrawals of capital it would increase it to a much higher figure.

THE COURT: 1600 percent means 16 to 1?

THE WITNESS: Right.

MR. FRIED: 16 to 1.

Q Mr. Deignan, between January 16th, when you prepared the memorandum regarding the Coordinators meeting, and January 20th, when you prepared this memorandum saying that the conversion had not gone too smoothly, did you receive any information within that period of time concerning the actual condition of the conversion?

A I don't recall that I did. This memo is a followup on the first memo of the Coordinators meeting.

Q Apparently on January 20th you accepted the fact that the conversion was not going smoothly.

A I accepted Mr. Stock's statement that he had heard rumors to that effect.

Q I show you 19K, which is now in evidence, and ask you if you recall receiving it on January 2nd or 3rd or thereabouts, Mr. Deignan.

A I have no clear recollection of having received it.

This would be something normally within the purview of the Examiners Division.

Q Well, did you discuss with anyone at Blair & Company whether they were late in filing the questionnaire as of September 26th?

A I have no recollection of it, sir, no.

MR. FRIED: May I read this, your Honor?

THE COURT: Is it in evidence?

MR. FRIED: This is in evidence.

THE COURT: Yes, you may.

MR. FRIED: 19K is on the letterhead of the New York Stock Exchange, dated January 2, 1970, addressed to Blair & Co., Attention Mr. Benjamin H. Hepburn.

"Gentlemen: Our records indicate we have not received a copy of the statement of financial condition based upon the 1969 audit of your organization as required by Rule 419 (Financial Statements to Customers).

"Please send promptly a copy of such statement of financial condition to Chief Examiner, New York Stock Exchange, Department of Member Firms, 4 New York Plaza, New York, N. Y. 10004.

"Inquiries concerning the above may be directed to Mr. Maurice Minen, telephone - (212) 623-6925."

And it is signed by Mr. Lloyd W. McChesney.

Q I think you told us before that Mr. McChesney was one of the Chief Examiners at that time, is that correct?

A The Chief Examiner.

Q The Chief Examiner. And what is Rule 419, to your knowledge?

A I wouldn't recall, except by reason of your reference to the financial statement. It is a rule that requires, within a certain number of days after the audit, that a statement of financial condition be submitted to customers of the firm and to the Exchange.

Q Do you know the number of days after the audit was taken the member firm was supposed to file the statement of financial condition?

A No, I do not. As I indicated, that was something within the purview of the Examiners Division.

Q Mr. Deignan, I show you Plaintiffs' Exhibit 2 for identification, which is a printed brochure, and it says, "Financial Report as of September 26, 1969." I ask you if you ever saw that before.

A I have no recollection of having seen it before, sir.

Q Do you recognize what that document is?

A Well, by its title it is a financial report as of September 26, 1969 issued by Blair & Company.

Q You have seen similar reports of financial condition, have you not?

A Yes, I have.

Q This is the report that is given to investors, is that correct, or customers of Blair & Company?

A Customers of the firm, yes.

Q I read at this time Plaintiffs' Exhibit 19L in evidence. It is a letter dated January 7, 1970 to Mr. Mauri Minen, New York Stock Exchange, Department of Member Firms.

"Dear Mr. Minen: Enclosed is a draft of the Statement of Financial Condition of Blair & Co., Inc. as of September 26, 1969. Copies of this statement will be mailed to customers in accordance with Rule 419.

"As the audit of Blair & Co., Inc. was divided between its Schwabacher Division and Blair Division at two different dates, Mr. Lloyd W. McChesney requested that I send a draft of the statement for your review prior to its release to our customrs.

"If you have any questions, please call me at 344-400" and so forth, "James J. Rush."

Was it customary for a member firm to send to the New York Stock Exchange a draft or a printed copy of a statement before it was released to customers?

A I don't know, sir.

Q That is not your department.

A No.

Q Do you know when Plaintiffs' Exhibit 2 was released by Blair & Company to its customers?

A No, I do not.

Q Mr. Deignan, in the early part of 1969, do you know what the net capital ratio was of Blair & Company?

A Not offhand, no.

Q I show you Plaintiffs' Exhibit 25, a letter dated February 24th addressed to Blair & Company from G. H. Newman, and ask you if you recall reading it at about that time.

A No, I have no recollection of seeing that.

Q In February of 1969 were you aware of any capital violation by Blair & Company?

MR. BROOKS: As of what date, may I inquire?

MR. FRIED: February or March.

MR. BROOKS: Of 1969?

THE COURT: You are asking whether he was aware of the capital violation as of the very time --

MR. FRIED: No, your Honor. In 1969 was he aware of any capital violation.

THE COURT: Ever?

MR. FRIED: Right.

A I really can't recall specifically. It is a long

time ago.

Q I show you Plaintiffs' Exhibit 27, which is a letter dated March 13, 1969, Mr. Deignan. See if that letter refreshes your recollection.

THE COURT: I'm sorry. What is the date, Mr. Deignan?

THE WITNESS: March 13, 1969.

A I don't remember seeing it, sir, no.

Q I believe I showed this to you before. This does not refresh your recollection now about the 15 to 1 ratio?

A No, sir, it does not.

Q Mr. Deignan, I show you Plaintiffs' Exhibit 32A, which is a memorandum dated April 16, 1969, and ask you if you recall seeing that in April of 1969.

A No, I don't believe I did see it at that time.

Q This is addressed to Advisory Committee from the Department of Member Firms and the subject is "Violation of Rule 325."

Who is the Advisory Committee and how does it fit into the structure of the New York Stock Exchange?

A Well, it is a committee of the Board of Governors and it consists of, I think, seven Governors, at that time, and their function is to screen various matters and make a determination whether they have to go to the full board or

whether they can be disposed of at the Advisory Committee level.

Q Were you ever consulted by the Advisory Committee in April of 1969 regarding Blair's net capital requirements under Rule 325?

A Not to my recollection, no.

(Continued on next page)

Q Mr. Deignan, I show you Plaintiffs' Exhibit 32 in evidence, which is a letter dated July 3, 1969, addressed to Mr. Ramsey and signed by Mr. Robert M. Bishop, who is the vice-president of the New York Stock Exchange, and ask you if you recall seeing that letter about July 1969?

A I have no recollection, sir, of seeing it.

Q The second paragraph of this letter says the answers on the agency financial questionnaire of May 30, 1968 were analyzed to show a ratio of 2854 -- which means 28-1/2 to 1, is that right?

A Right.

Q When the reference is made to this phrase "The answers were originally analyzed", who would do the analyzing at the New York Stock Exchange?

A One of the examiners.

Q Would that come within your jurisdiction as Supervising Coordinator?

A No, it wouldn't.

Q And at that time you say Mr. McChesney was the chief examiner?

A Yes.

Q Was there a particular examiner assigned to Blair & Company in 1969?

A For what purpose, sir?

Q To examine the statements which were filed by Blair & Company.

A Not that I know of.

Q When a regular financial questionnaire is filed, what is the routine examination made by the Stock Exchange of those documents?

A Well, I can't be too specific, because it is the function of the Examiners Division, but the answers are received by the Examiners Division. Somebody makes an allocation of the work to one of the examiners, and he --

Q What I am trying to find out is, is the analysis made by the examiner or is it sent to some other department?

A No, it's made by the examiner.

Q When the examiners find that there is a capital violation, what was their function or duty at that time, if you know?

MR. BROOKS: I object to the form of the question, your Honor, because it assumes that the examiner determines whether there was a violation.

THE COURT: Changing "when" to "if".

MR. BROOKS: The objection would be the

same, because it would assume that the examiner makes that determination, and I don't think that has been established.

THE COURT: Well, do you want to find out who makes the determination, Mr. Fried?

Q Mr. Deignan, I show you this letter. It says the answers originally were analyzed to show a ration of 2854 percent, which we have agreed is a 28-1/2 to 1 ratio.

Who made that determination as to that ratio?

A I would say that is the result of the examiner's analysis.

Q Now, when the examiner makes that kind of an analysis and finds out that there is a ratio in excess of the capital requirements rule, was there any particular report that he had to make or give?

A I really don't know, but this correspondence you have been showing me would indicate that he passed the results of his analysis along to the Finance Division for followup.

Q Was it the customary rule, do you know?

A That was the way things were normally handled, yes.

Q Do you know whether the Finance Division would

would make any other report?

A Well, they would report it to whomever they reported it to, you know, some higher-up.

Q To whom did the Finance Division report?

A I think at this point in time they reported to Mr. Stock,if I am not mistaken.

THE COURT: When you speak of the Finance Division you are speaking of the employees of the Stock Exchange who work within that division; is that right?

THE WITNESS: Yes, sir.

Q Fred Stock was then the vice-president and associate director of the Department of Member Firms; is that correct?

A I don't know if he was a full vice-president at that time. Perhaps an assistant vice-president.

Q I said associate. I meant assistant vice-president.

A I believe that is so, yes.

Q Mr. Deignan, did the question of unlocated securities come to your attention in 1969?

THE COURT: At Blair, do you mean?

Q -- at Blair.

A I'm not sure, but I believe so.

Q I show you Plaintiffs' Exhibit 42 for

identification and ask you if you saw that memorandum about January 1969 or thereabouts.

A Yes, I saw it.

Q As a matter of fact, there is some handwriting at the bottom of that, is there not?

A Yes.

Q Is that in your handwriting?

A No.

Q Do you recognize whose handwriting it is?

A Yes.

Q Whose is it?

A Mr. Bishop's.

MR. FRIED: I offer that in evidence, your Honor.

MR. BROOKS: No objection, your Honor.

THE COURT: All right. Received.

(Plaintiffs' Exhibit 42 for identification was received in evidence)

THE COURT: Who is Mr. Sokolowski?

THE WITNESS: He was one of the examiners.

MR. FRIED: May I read this, your Honor?

THE COURT: Yes.

MR. FRIED: This is a memborandum on the form of the New York Stock Exchange, dated January 9, 1969.

It is to Mr. McChesney from T.D. Sokolowski.

Q Who were these people?

A Mr. McChesney was the chief examiner and Mr. Sokolowski was one of the examiners under him.

(Mr. Fried read to the jury from Plaintiffs' Exhibit 42 in evidence)

Q That ratio would mean a ratio of almost 12 to 1, is that correct?

A That's correct.

(Mr. Fried continued reading to the jury from Plaintiffs' Exhibit 42 in evidence)

Q A ratio of 1053 would be 10-1/2 to 1; right?

A Right.

(Mr. Fried continued reading to the jury from Plaintiffs' Exhibit 42 in evidence)

Q Who is Mr. Vincent T. Garrish?

A The name is not familiar to me.

Q Did the question of unlocated securities come to your attention at that time, Mr. Deignan?

A Yes.

Q And were you aware at that time that the unlocated securities amounted to about half a million dollars?

A I testified I saw the memo, I believe.

Q Yes.

A So, yes, I would know that.

Q Now, this handwriting -- I wonder if you could help me out, Mr. Deignan. I can't seem to make this out.

A JJD.

Q They are the initials for --

A My initials.

THE COURT: Is that the same exhibit you were just reading?

MR. FRIED: The same exhibit.

THE COURT: Does that mean you wrote it?

MR. FRIED: No, this was written by somebody with the initial B.

Who is that?

THE WITNESS: Mr. Bishop.

MR. FRIED: This note says "JJD. We should insist on a schedule for clean-up. We have already had too much time."

Q What does that refer to, Mr. Deignan?

A The differences.

Q This is a note from Mr. Bishop to you saying that the differences should be cleaned up. They already had too much time.

A That's correct.

Q Do you know if those differences were ever cleaned up?

A No, I don't.

Q Mr. Deignan, I show you Plaintiffs' Exhi-it 28, and particularly the answer to Question 13, I believe.

First I am going to ask you: As the Supervising Coordinator, was it part of your duties to examine and analyze -- not analyze but to examine the answers to Special Financial Questionnaires that were filed by member firms?

A No, it wasn't.

Q Now, look at Exhibit 28 and tell me if you ever saw that document.

A I have no recollection of having seen it, no, sir.

Q I show you part of Exhibit 28 which relates to Question 13 of the financial questionnaire, and particularly the items which refer to securities positions not in balance, and it shows "Ownership not knonw 622,225" and "Location not known, 709,944".

Do you recall seeing any entry of that type at the time these answers were filed?

A No; I don't, sir.

Q Do you know whether or not missing securities

were to be charged against capital at that time?

MR. BROOKS: I object to the question, your Honor. I don't know what he means by missing securities.

MR. FRIED: Unlocated securities.

A It's my recollection at that time there was no capital charge.

THE COURT: Would you explain what you mean by charge against capital?

THE WITNESS: The amount of money required to buy in these short differences would be charged to capital.

THE COURT: Was or was not?

THE WITNESS: Was not at that time.

THE COURT: In other words, the firm wasn't debited on account of the statement that those securities were not located, which were missing. They were regarded as if they had been located, is that right, for all practical purposes -- for the purpose of computing capital, I mean?

THE WITNESS: That is correct.

THE COURT: Thank you.

Q Did there come a time when the Stock Exchange changed the rule and said that unlocated securities should be charged to capital?

MR. BROOKS: I object to the question unless counsel puts the date in the period he is inquiring about.

THE COURT: Well, first he can ask him if there came a time and then we can find out what time it was.

If you have it available, Mr. Fried, will you give us the time?

MR. BROOKS: I object to that.

THE COURT: Was there such a time? Did the Exchange change its rule?

THE WITNESS: It's my understanding that there was a time after I got out of the coordinator function --

THE COURT: In other words, about when? When did you get out of the coordinator function?

THE WITNESS: In July of '71. It might have been at or about thattime.

THE COURT: So the change was after the liquidation of Blair?

THE WITNESS: I would say so, yes.

Q What was the rule in effect when you were the Supervising Coordinator?

A There wasn't any rule as such. It was just a matter of practice not to charge them.

THE COURT: In other words, up to the time that Blair stopped doing business, the rule was that unlocated securities were not charged; is that correct?

THE WITNESS: That's correct.

Q Mr. Deignan, I show you Exhibit 47 for identification and ask if you can identify that as the answers which were filed with the New York Stock Exchange by Blair & Company.

A Yes. It appears to be in answer to a Special Financial Questionnaire.

MR. FRIED: I offer that in evidence.

MR. BROOKS: No objection.

THE COURT: All right. Tell me what period it covers.

MR. FRIED: Yes, your Honor. This is the answers to Special Financial Questionnaire, January 27, 1969.

THE COURT: Thank you.

(Plaintiffs' Exhibit 47 for identification was received in evidence)

THE COURT: I think this would be a good time for us to take a brief recess.

(Recess)

MR. FRIED: Your Honor, in connection with

this last exhibit, Mr. Brooks called to my attention two pages which he says are not part of this exhibit, and I don't want to mutilate the exhibit except with the Court's permission.

THE COURT: Well, note for the record that it has to be corrected. Do it some other time.

MR. BROOKS: There are three pages involved, your Honor, at least in my copy.

MR. FRIED: With the Court's permission we will remove them later on.

THE COURT: Very good.

Q Mr. Deignan, I show you answers to Question 13 on Exhibit 47, which is the answer to the January 27, 1969 questionnaire, and ask you if the figures there with regard to the security positions not in balance of 1,700,000 long and $900,000 short, came to your attention at that time?

A I don't recall specifically, sir.

Q By the way, before, when you were talking about -- or I was talking about the charging of unlocated securities to capital, isn't it a fact that if you did charge the unlocated securities to capital, the capital ratio would be much larger?

A That's correct.

THE COURT: That is because the capital itself would be smaller, is that right?

THE WITNESS: It would reduce the capital by the amount of the short.

THE COURT: Right.

Does the jury understand this?

Good.

Q Mr. Deignan, I show you a copy of a letter dated November 20, 1969, addressed to the Stock Exchange and signed by Mr. Hepburn on behalf of Blair & Company and ask you if that letter came to your attention at about that time.

A I don't recall seeing it, sir, at that time.

Q It is a letter addressed to the New York Stock Exchange.

A Attention of Mr. Robert Spies.

MR. FRIED: Do you have any objection if I offer this in evidence now, Mr. Brooks ?

MR. BROOKS: No.

THE COURT: What number is it?

MR. FRIED: No. 56.

(Plaintiffs' Exhibit 56 for identification was received in evidence)

Q Mr. Deignan, in November of 1969, you were the Supervising Coordinator for Blair & Company?

A Yes.

Q Look at the information regarding unlocated securities referred to on page 2 of Plaintiffs' Exhibit 56 and tell us if the long and short positions stated there were accurate and came to your attention.

A I have no clear recollection either way.

Q Can you tell the Court and jury whether or not there was a question of unlocated securities which to your attention in November of 1969?

A Again, sir, I can't remember. They probably came to my attention in one way or another, not necessarily through this letter.

Q I am just trying to refresh your recollection.

Do you recall now, I'm calling on your memory, whether or not during the year 1969 the question of unlocated securities came up?

A I have no absolutely clear recollection of it, no.

Q Do you recall whether or not the question of unlocated securities came up with reference to the Schwabacher Division of Blair in 1969?

A I don't remember, sir.

Q Mr. Deignan, would the request for an extension to file the regular financial questionnaires come to your attention as Supervising Coordinator?

A Not at that time, no.

Q To whom would those requests go?

A To the Finance Division.

Q Was Mr. Hepburn then in the Finance Division?

A Mr. Hepburn was an officer of Blair.

Q I'm sorry. I withdraw that. I'm confused.

Was Mr. Spies in the Finance Division?

A Yes, he was.

MR. FRIED: May I just read one paragraph here.

This letter of November 20, 1969 is on the letterhead of Blair & Company and it is addressed to the New York Stock Exchange.

"For your information, we need the extension to work and resolve two main areas."

The extension he is talking about -- I better read that.

"On Monday, November 17th, our first transactions for the East Coast Division were put through the Midwest System. Preparation for this during the year of November 11th and continuing work on it during this week has caused

our audit research work to be brought to a virtual standstill.

"In connection with the Schwabacher acquisition, the auditor's finding with respect to the Regular Financial Questionnaire is important in connection with the final settlement between the two firms. For this reason it is important that all differences and other findings of the auditors be resolved to the extent practical prior to filing.

"For your information, we need the extension to work and receive two main areas:

"1. Suspense Account, debit balance 1,259,000; Valuation long $591,000; short, $881,000.

"2. Unlocated Securities Positions, $2,300,000 long; short, $2 million.

"Our capital meets the requirements of Rule 325 after applying a full charge for the suspense account No. 1 above exposure. We have taken no charge for the short values or credit for the long values in unlocated positions."

Q Can you explain what suspense account means, Mr. Deignan, as indicated on that exhibit?

A Generally, it is an account that is used to record items temporarily until the account in which they

belong can be resolved.

Q Did you have anything to do with the granting of the extension of time?

A I have no recollection that I did at that time.

Q Mr. Deignan, I'll refresh your recollection by showing you a memorandum dated December 1, 1969, 56-A for identification, and ask you if you prepared that memorandum.

A Yes, I prepared that memorandum.

MR. FRIED: I offer it in evidence.

MR. BROOKS: We don't appear to have a copy, Mr. Fried.

MR. FRIED: Sorry. The copies are on their way. It is apparently the only one I have at the moment.

Oh, we have one here.

(Pause)

MR. FRIED: I offer this in evidence now, Mr. Brooks.

MR. BROOKS: No objection.

THE COURT: All right. It is received.

(Plaintiffs' Exhibit 56-A for identification was received in evidence)

THE COURT: Do you know whose handwriting is on the right-hand side there?

MR. FRIED: I was just going to ask him that question, your Honor. Thank you.

THE WITNESS: I believe it was Mr. Stock's.

MR. FRIED: May I read this now, your Honor.

THE COURT: You may.

Q This memorandum has your initials, Mr. Deignan.

A Yes, I signed it -- initialed it.

(Mr. Fried read to the jury from Plaintiffs' Exhibit 56 in evidence)

Q The East Coast Division was Blair & Company, is that correct?

A Yes.

(Mr. Fried continued reading to the jury from Plaintiffs' Exhi-it 56 in evidence)

Q Mr. Deignan, I wonder if you could help us out and read the handwriting which appears in the upper right-hand corner.

THE COURT: Will this help you,here.

A "JJD: I see no reason to delay the filing of the Special Q for Schwabacher Division and think they could also file the regular. However, since we have

sat on this for over a week, and they are now overdue, I think we should grant the two weeks on the regular and tell them to file the special but not treat the special as overdue.

"DF,if RAS received this on 11/27 why hasn't it been processed before. 12/1" and the initials of "FJS".

Q Is there is distinction between the regular and the special answers?

A Well, the regular is the audited questionnaire.

Q And the special?

A The special is the ones that may be prepared and filed by the firm itself.

Q What does that mean, RAS. Is that regular answers --

A No, that's Robert A. Spies of the Finance Division.

Q "Received this one -- why hasn't it been processed before?"

What was the time usually for processing that type of thing?

A You know, within a matter of a day or two.

Q Now, after having read that memorandum, does it refresh your recollection about what the problems were

with regard to the statements of Schwabacher and Blair at that time?

A It doesn't help my recollection at all. The memoranda speaks for itself, I think.

THE COURT: As I understand Mr. Stock's comments, he was saying that he felt no extension should be given except such as was necessary to keep the reports from being overdue; is that right?

THE WITNESS: That's right, sir.

Q Mr. Deignan, I show you a document marked 29-A for identification and ask you if that was received by the New York Stock Exchange about that time.

A Well, it was sent by the New York Stock Exchange, sir.

Q Yes.

Did you see that before it went out?

A No, sir.

Q Did you see it at about that time?

A I have no recollection of seeing it, no.

Q Is it on the stationery of the New York Stock Exchange?

A Yes.

MR. FRIED: I offer that in evidence.

MR. BROOKS: Your Honor, I will object on the

grounds of relevance. This is a letter to Schwabacher & Company complaining about Schwabacher's failure to file a statement of financial condition as of August 30, '68, before it had even merged with Blair & Company. I just think it's too far afield from our subject matter here to be relevant.

THE COURT: I don't know if you wish to say anything, Mr. Fried. If not, I agree with Mr. Brooks.

MR. FRIED: Well, your Honor, any of the problems that Schwabacher and Blair had at the time or shortly before the merger I think are relevant.

THE COURT: Well, I do not think there is any dispute here that there were problems, and I think to go back that far is not necessarily irrelevant, but --

MR. FRIED: The problems were brought to the attention of the Stock Exchange. If Mr. Brooks will concede that, I will withdraw it.

THE COURT: Well, let's admit it. I just do not want the jury to become burdened with all these exhibits.

I will overrule the objection.

(Plaintiffs' Exhibit 29-A for identification was received in evidence)

THE COURT: What is the date of that?

THE CLERK: March 5, 1969.

Q Mr. Deignan, I show you Plaintiffs' Exhibit 44, which is a memorandum to Fred Stock from Richard Greves. I believe you identified Mr. Greves before, but would you mind describing what his position was?

A He was my assistant.

Q I show you Plaintiffs' Exhibit 44 and ask you if that memorandum came to your attention on or about June 10, 1969.

A Yes. I believe I did see this at the time, or shortly thereafter.

Q Does that refresh your recollection as to the problem of unlocated securities which was in existence in 1969?

A This demonstrates that there were.

THE COURT: Well, does it refresh your own recollection?

THE WITNESS: No specifically, sir.

THE COURT: You are simply prepared to accept the fact that is in the memo, is that it?

THE WITNESS: That's it.

Q Mr. Deignan, this memorandum says, "As of June 10, 1969, the differences resulting from the account are as follows:

"Items short 1259, lone 1264.

"Market value short 5,200,000. Long, 5,600,000".

Do those figures after you look at them come to mind as the condition for unlocated securities?

A No, they don't, sir.

Q I show you Exhibit 46 in evidence, which is a letter dated July 29, 1969. This is a letter I believe you sent; is that correct, Mr. Deignan?

A Yes, I sent that letter.

THE COURT: To whom is it addressed?

THE WITNESS: To Blair & Company, attention of Mr. Hepburn.

THE COURT: Thank you.

Q In this letter you say, "The Exchange will not object to the discontinuance of region stock record differences reflected by the March 15, 1969 securities count."

Did you have any discussion with some member of the Exchange before you wrote this letter, Mr. Deignan?

A Well, I am sure I had a discussion with someone in our department, yes.

Q And who made the decision that the Stock Exchange wouldn't object to the discontinuance of the region stock record differences?

A. The person that I spoke to.

Q The letter states:

"However, it is our understanding that you now intend to commence a count on a letter-by-letter basis and the differences shown by such count will be reached and resolved by moving on to the next letter."

Do you know whether that was done?

A I can't remember at this time, sir, but the letter does indicate we were getting weekly reports.

Q "It is estimated it will take from two to three months to complete the project."

Do you know whether or not they ever undertook that project?

A Again, sir, I don't remember specifically.

Q And the last sentence says, "You have agreed to subject to the Exchange as of Friday of each week a progress report on the operation."

Were those reports submitted to you on a weekly basis?

A I don't remember. If they were, they were in the files.

Q Well, do you have any recollection now as to whether they were in fact submitted to you?

A I have a vague recollection, yes, of

receiving reports.

MR. FRIED: May I ask that those reports be produced.

MR. BROOKS: Your Honor, the entire file was made available to counsel over the period of three or four years. If he overlooked that, it's his own fault.

THE COURT: I wish you would not make such a request in the presence of the jury, but I will have to agree with Mr. Brooks.

MR. FRIED: I am sorry.

Q Mr. Deignan, I show you Plaintiffs' Exhibit 19-D. We are still talking about the problem of unlocated securities.

I ask you to look at the answer to Question 13, which appears on the next to the last page of this exhibit.

THE COURT: The same answer, a different questionnaire --

MR. FRIED: The same form, same question.

Q (Continuing) I ask you if the differences in the security positions came to your attention at the time those answers were filed?

MR. BROOKS: Your Honor, I think this has

been described as the same form.

THE COURT: I used the expression. I do not know whether it is correct or not.

MR. FRIED: Similar.

MR. BROOKS: It is an entirely different animal from what we have so far.

THE COURT: Then the differences have to be brought out.

Q Regardless of the differences in form, Mr. Deignan, can you tell by looking at that whether or not there were substantial differences in security positions?

MR. BROOKS: I will object to the form of the question, particularly the term "substantial differences".

THE COURT: Well, he has been asked if he can tell. If he cannot tell -- if he does say that there are substantial differences, we have to find out what he means.

A Well, the only item on that area that I can see here are dividends and interest receivable. Dividend valuations.

THE COURT: The only item that might constitute a difference?

THE WITNESS: Yes.

Q Do you see the very last item there "Other

securities positions. Long and short positions"?

A It says "Other security positions", but I don't recall what that means.

Q By the way, Mr. Deignan, have you talked with Mr. Brooks before you took the stand today?

THE COURT: Ever, or immediately before?

Q (Continuing) In this case.

A Before today?

Q Yes.

A Yes, I spoke with Mr. Brooks some weeks ago.

Q And did you talk with any of the other attorneys about this case within the last few weeks? I mean, any of the gentlemen seated at the counsel table.

A Well, Mr. Nelson and Mr. Reilly were present when I met with Mr. Brooks.

Q Where did that meeting take place, in New York?

A Yes.

Q Did you make a visit to New York at that time?

A Yes, sir.

Q How much time did you spend with the gentlemen at that time?

A About two hours, I would say.

Q Now, do you recall whether at the end of 1969 there were substantial unlocated securities?

MR. BROOKS: Objection to the word "substantial".

THE COURT: Well, let's say "unlocated securities" and let him use his own words to describe it.

A Well, I have no independent recollection of it, but the various documents that you showed to me would so indicate.

Q Mr. Deignan, do you remember giving testimony in a deposition on March 8, 1972, in this case, and being asked this question -- and making the following answer?

THE COURT: What page, please?

MR. TURETSKY: Page 17.

Q "Q Would it be fair to say that at that period of time, namely, the end of 1969, these were substantial in amount or material in amount so as to require a monthly operating questionnaire?

"A Yes. That is my recollection."

I should perhaps to be fair to you read the previous question so that you know the subject matter you were talking about.

"Q Would you say that there were securities missing? Is that what you are saying? Or unaccounted for?

"A 'Unaccounted for' is a better word."

Then you were asked the question of whether it was substantial or not.

Were you asked those questions and did you make those answers, Mr. Deignan?

A Yes, it is my recollection that I did.

Q I show you one other document in the year 1969 as far as Blair is concerned, on this question of unlocated securities, Mr. Deignan, and ask you whether by looking at Exhibit 19-E it refreshes your recollection as to your awareness of the short and long position of securities in Blair & Company at that time?

I am referring you again to the answer to Question 13.

THE COURT: The question is whether he remembers that or whether it refreshes his recollection, Mr. Fried.

MR. FRIED: Yes.

A These financial questionnaire answers, you know, wouldn't help to refresh my recollection, because I never saw them.

THE COURT: That one does not refresh your recollection any more than the others?

THE WITNESS: No.

Q Do the numbers there refresh your recollection?

A No, they don't.

Q However, when I read to you from your deposition, you did state that the unaccounted for securities at the end of 1969 were in a substantial amount; is that correct?

THE COURT: I think what he stated is that that was his testimony on deposition.

Is that right, Mr. Deignan?

THE WITNESS: Yes, which was some three years ago.

Q Does it now refresh your recollection as to whether or not there were a substantial amount of unlocated securities by the end of 1969?

MR. BROOKS: Your Honor. I object to the form of the question. That's not what the testimony which was read says.

MR. FRIED: All right. I withdraw it, your Honor.

THE COURT: Sustained.

Q Was there also a question of missing or unaccounted for securities in the Schwabacher Division in 1969?

A I don't remember that.

THE COURT: Are you suggesting that you think that is incorrect or that you simply have no recollection at all?

THE WITNESS: I just don't remember, because I didn't -- I was not as close to the Schwabacher situation as I was to Blair. The merger had taken place before I became a coordinator, so I just don't remember that.

Q Mr. Deignan, I show you Plaintiffs' Exhibit 49 and just show you the answer to Question 13 on that exhibit and ask you if that refreshes your recollection with regard to the security positions of Schwabacher & Company as of that time.

MR. BROOKS: Your Honor, I question the line of inquiry which relies on these financial questionnaires which the witness has said that he has never received or seen. It is fruitless to try to refresh his recollection with those.

THE COURT: Yes. I will sustain the objection.

MR. FRIED: I withdraw the question.

THE COURT: Without meaning to do anything except to acquaint the jury with the facts necessary, Mr. Deignan's deposition to which reference was earlier made was taken on March 8, 1972.

Q Mr. Deignan, I show you Plaintiffs' Exhibits

37, 38, 38-A, 39, 40 and 40-A and ask you whether those were monthly reports filed with the New York Stock Exchange.

THE COURT: Is there any dispute about it?

MR. BROOKS: Your Honor, there was a dispute. S ome of them were not admitted in evidence.

MR. FRIED: That's right.

MR. BROOKS: -- because they incomplete or not signed and dated, and others were admitted into evidence. So there is a dispute as to some but not others.

THE COURT: Well, all right. See whether the witness knows.

Q (Continuing) Just tell us if those are reports filed with the New York Stock Exchange, please.

THE COURT: Does the question amount to anything more than asking you do they appear to be the reports or are you asking him whether he actually saw them.

Mr. Deignan, would you have seen those when they were filed?

THE WITNESS: Some of those I would, and one of them has the initials DD on it, which would be the initials of my assistant, Dennis Dirks, so he saw it.

THE COURT: All right.

THE WITNESS: They appear to be, obviously, answers to the Special Operations Questionnaire.

MR. FRIED: Mr. Brooks, do you have any objection now if I offer these? 37 is in evidence. 38 is in evidence. 38-A is in evidence. 39 is only for identification. I offer that at this time.

MR. BROOKS: What is 38-A?

THE COURT: If it is in evidence, what is the difference?

MR. BROOKS: There was a substitution that we made yesterday for 38-A.

MR. FRIED: We'll straighten that out.

MR. BROOKS: Okay.

MR. FRIED: 39 I offer in evidence.

MR. BROOKS: No, your Honor. I object to 39 for the same reason we did before.

THE COURT: I don't remember your objection. I don't carry them in my head.

MR. BROOKS: It appears to be a draft of Exhibit 38. It is only signed by one of the two persons required to sign it, and it is undated.

38, however, as we --

THE COURT: I do remember. 39 is the one

that has handwritten numbers on it?

MR. FRIED: That's right. This came from the Exchange's files.

MR. BROOKS: I don't believe it did, your Honor. It came from Blair's files.

THE COURT: Well, I do not see why we should hold up the jury on this, unless you think it is necessary to --

MR. FRIED: Let me ask the witness, your Honor, if he can recognize this document.

THE COURT: 39 for identification?

Well, show him 38 and 39, so he can make an intelligent comment.

Will you look at 38 and 39, Mr. Deignan, and tell us after looking at them both, whether you are in a position to say they were both filed with the Exchange.

It doesn't do us much good if you say they appear to be, because I could say that, too.

THE WITNESS: Well, 38 was definitely filed with the Exchange, because that bears the initials DD, Dennis Dirks, my assistant.

THE COURT: Written by him, as far as you can tell?

THE WITNESS: Yes.

Q On 39 for identification, do you recognize any of the handwriting, Mr. Deignan?

A No, sir; I don't.

I might add further that 38 bears the impression of an Acco fastener, which was our system for filing. The other doesn't.

THE COURT: Apparently there was no "Received" stamp regularly stamped on it by the Exchange.

MR. BROOKS: Your Honor, the substituted copy of Exhibit 38 has on it a received stamp bearing Mr. Deignan's initials. 39 doesn't.

THE COURT: Was it normal to stamp something like that?

THE WITNESS: Yes, my secretary would stamp anything that came in with the date and my initials.

THE COURT: All right. Thank you.

I think we will have to leave it at that, Mr. Fried. I am afraid it is still not over the hump.

MR. FRIED: All right.

Q Mr. Deignan, these reports indicate to you that Blair & Company was filing monthly reports, is that correct?

A Yes; they were.

Q And when I say monthly reports, I mean of

these Special Operations Questionnaire.

A Correct.

Q And you say that they only filed monthly reports because of special problems with member firms; is that correct?

A Operations problems, yes.

Q When for the first time --

MR. FRIED: I withdraw that.

Q Do you know when Blair started filing monthly reports?

A No, I don't.

Q Do you know who made the determination that Blair should file monthly reports?

A No, I don't.

Q Was that a decision of yours or was that a decision of somebody else in the Stock Exchange?

A Well, my problem here is that I replaced another coordinator, and I don'tknow whether we were getting months reports when I took over or whether I initiated it.

THE COURT: In other words, you might have. Is that what you are saying?

THE WITNESS: I might very well have initiated it, yes, sir.

Q Well, did you examine these reports when they were filed with the New York Stock Exchange?

A Either I or my assistant would examine them, yes.

Q Another report, which I haven't yet shown you is Plaintiffs' Exhibit 19.

A Yes --

Q Do you recall seeing that report when you were with the Stock Exchange?

A Yes. I saw this one, as it bears my initials.

Q Now, there is some handwriting on top which says, "Hold for FQ".

What does that mean?

A Hold for Financial Questionnaire and answer.

Q This particular report is dated December 31, 1969.

Do you recall whether this was the first monthly report filed by Blair & Company of their special operations?

A No, I don't, sir.

Q It is a fact, isn't it, that on every single one of these monthly reports, a net capital deficiency is shown?

MR. BROOKS: I object to the form of the question.

THE COURT: Deficiency or apparent ratio higher than a certain amount?

Q It says "Amount of net capital in excess of minimum requirements", which you have put the other way.

THE COURT: Well, if you want to say a negative figure in a certain place, I think that would be a proper way of asking it.

MR. BROOKS: Is Mr. Fried making a statement, your Honor?

THE COURT: He appears to be asking the witness. Let's see if the witness can describe the character of the information given in there.

Q Look at Exhibit 37, under Item 1-I.

What do the figures in parenthesis denote?

A Well, it denotes that in one instance, as of January 30, 1970, the firm is failing to meet minimum capital requirements by an amount $4,246,435.

THE COURT: A minimum of capital requirements means the requirements of Rule 325.

THE WITNESS: Yes, sir.

THE COURT: That is not the same as saying that they had a capital deficiency, as that word is used

for normal accounting purposes. It is a different measure.

THE WITNESS: It is called a deficiency rather than a deficit, which is perhaps a fine distinction.

THE COURT: Well, I mean, Rule 325 is a particular standard set by the Stock Exchange, not by the accounting profession.

THE WITNESS: That's right, sir.

Q I show you Plaintiffs' Exhibits 38 and 40, and the same thing is true: That the figures appear in parenthesis on both of those reports, is that correct?

A That's correct, sir.

MR. FRIED: Do you have 48 for identification? I would like to offer that in evidence.

MR. BROOKS: We do object to 48 for identification on the ground that it appears to be another draft that is handwritten and not signed or dated.

THE COURT: I sustain the objection, unless the witness testifies to the contrary.

Q Mr. Deignan, I show you a paper marked Exhibit 71 for identification and ask you if you can identify that document.

A Well, it's -- it appears to be a worksheet probably prepared by one of our examiners, indicating the

capital position of --

Q Is that in your handwriting, Mr. Deignan?

A No; it's not.

Q Did you ever see that before today?

A My initials appear in the upper left-hand corner.

THE COURT: You say probably written by one of your examiners?

THE WITNESS: Yes.

Q Did you receive it at about that time, in January 1970?

A No, this would be -- it's hard to say. It's a capital position as of January 31, 1970.

Q It would be sometime after that?

A Well, it depends on, you know, where he got his information. He may have gotten it from a financial questionnaire or --

Q Well, regardless of where he received the information from, that document speaks of the situation as of January 31st, does it not?

A That's right.

Q And it came to your attention, did it not?

A It did.

Q And you put your initials on that document?

A I did.

MR. FRIED: I offer that inevidence.

MR. BROOKS: No objection.

THE COURT: All right. Received.

(Plaintiffs' Exhibit 71 for identification was received in evidence)

THE COURT: May I see that after it is marked.

(Pause)

THE COURT: Can you translate it for us, Mr. Deignan.

THE WITNESS: AI is aggregate indebtedness.

THE COURT: Ten million --

THE WITNESS: 105 million.

THE COURT: 105 million?

THE WITNESS: It looks like an NC.

THE COURT: Yes.

THE WITNESS: That should be net capital, 2,754,000.

THE COURT: This would be the ratio, then, R?

THE WITNESS: Yes.

THE COURT: 3848, something like that?

THE WITNESS: This is required for AI. In other words, the amount of capital needed to support that

amount of aggregate indebtedness.

THE COURT: To comply with Rule 325?

THE WITNESS: And this is the aggregate.

THE COURT: The aggregate needed to meet Rule 325.

Q Does that document indicate to you that the ratio was almost 38-1/8 to 1?

A Yes, it does.

Q Now, will you compare Plaintiffs' Exhibit 37 with 71 and tell us if it is not a fact that the capital violation went up in that short period of time.

THE COURT: As of what date is Exhibit 37?

MR. TURETSKY: December 1969.

MR. BROOKS: Your Honor, the date of 37 is as of January 30, 1970, and the date of 71 is as of January --

THE COURT: That is why I asked. I mean that is not why I asked. I asked him if that wasn't true.

Are those both of the same date?

THE WITNESS: Well, there are two columns here. One is as of December 31, 1969. The other is as of January 30, 1970.

THE COURT: So what we are saying is that 37 is as of January 30th, but it also shows December 31st,

is that right?

THE WITNESS: That's correct.

THE COURT: And you are being asked to tell whether there was an increase in the capital deficit between December 31st and January 30th.

THE WITNESS: Uh, huh. Yes, there was an increase.

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Q Is it not a fact that as of December there was a capital ratio of 26 to 1?

A That's right.

Q And as of the end of January the ratio was 38-1/2 to 1?

A Correct.

Q Mr. Deignan, I show you a memorandum dated January 16, 1970.

(Pause)

MR. FRIED: Sorry, your Honor. But one exhibit that I was going to offer is already in.

THE COURT: Good.

Q Mr. Deignan, I show you a memorandum dated February 24, 1970, Plaintiffs' Exhibit 59 for identification, and ask you if your initials appear at the bottom of that.

A Yes, they do.

MR. FRIED: I offer it in evidence.

MR. BROOKS: No objection.

THE COURT: Received.

(Plaintiffs' Exhibit 59 for identification was received in evidence)

xxx

THE COURT: This is a memorandum for your files? It does not appear to be addressed to anybody in

particular or would the addressees be named on the bottom?

THE WITNESS: This would be to the files.

THE COURT: It is written by you, is that right?

THE WITNESS: Yes.

MR. FRIED: May I read this, your Honor?

THE COURT: Yes.

MR. FRIED: It is a memorandum dated February 24, 1970, Blair & Co., Inc.

"This afternoon Fred Stock reported to me the results of a telephone conversation he had earlier today with Mr. James B. Ramsey of Blair & Co., Inc.

"In order to improve its capital position, Blair & Co., Inc. has induced one of its vice-presidents to issue a secured demand note in the amount of $1,400,000 which will be collateralized with" -- it says 200,000, but it is only a typographical error.

Can we agree it is $2 million?

MR. BROOKS: $2 million.

MR. FRIED: --"with $2 million worth of securities. This, according to Mr. Ramsey, will bring Blair & Co.,Inc. in compliance with Rule 325.

"T his afternoon a directors meeting is being held, at which time consideration will be given to

other methods of improving capital position, including:

"1. Sale of additional non-voting stock;

"2. Sale of the Blair Fund, or,

"3. Sale of securities collateralizing outstanding secured demand notes.

"Mr. Ramsey indicated that these are rather a controversial issue. He promised to report the results of the directors meeting.

"Last week, I believe it was on Friday, Mr. Benjamin Hepburn called me concerning a secured demand note for $2 million to be issued by an 'insider' who has already outstanding a secured demand note. Mr. Hepburn asked me if the life of the note could be of short duration, say thirty or sixty days.

"After checking with Bob Bishop, I told him that this would be acceptable under the circumstances as a temporary stop gap."

Q Then your initials are signed on this memorandum.

Does that refresh your recollection to this particular item, Mr. Deignan?

A It doesn't refresh my recollection any, no.

Q Do you recall having talked to Mr. Bishop about permitting $2 million of securities,which would be

valued at $1,400,000 for capital purposes, to be taken into Blair & Company as a temporary stop gap?

A I don't remember it specifically. But I recorded it on this memorandum.

THE COURT: I take it you have no doubt that you did.

THE WITNESS: No, I have no doubt.

Q From your experience at that time, wasn't this rather unusual, to take in money as a temporary stop gap?

A Well, it was certainly different. That was why I went to Mr. Bishop.

Q When you say it was totally different, what do you mean by that?

A I said, "different," sir, not "totally".

Q I'm sorry. There was a difference.

A Yes.

Q Okay.

What do you mean by the "difference"?

A It is my recollection that at that time the normally accepted period of the note was ninety days.

Q Wasn't it longer than that at that time? Wasn't it six months?

A I don't recall specifically. I thought it was ninety days.

Q Do you recall the conversation you had with Mr. Bishop?

A Not specifically, no.

Q Do you recall the conversation you had with Mr. Benjamin Hepburn?

A Not specifically.

Q Do you know who the person was who is referred to in this memorandum as an insider who has already outstanding a secured demand note?

A No, I didn't.

THE COURT: You mean you did not then or you do not now, or both?

THE WITNESS: Or both.

Q Had you been told at that time that Mr. Ramsey had reported to the Stock Exchange that the Blair books were out of control?

A No, I have no recollection of that.

Q Is it your testimony that in January and February of 1970 no one at the Exchange told you that Mr. Ramsey had come there and reported that the Blair books were out of control?

A I don't remember any such information.

Q Do you remember any conversation regarding Mr. Foley coming in to the Blair organization as an investor

in February of 1970?

A I don't remember any specific conversation. It came to my attention, I think, from somebody in Blair.

Q Mr. Deignan, I am not referring to a conversation.

Did you receive any information in February that Dr. Foley was going to become a secured demand note investor with Blair & Company?

A I can't recall specifically when that name first came to my attention. If it were in February, that's it.

Q I show you Plaintiffs' Exhibit 19-G, a letter dated --

THE COURT: May I just ask this: I take it then that the Dr. Foley thing did come to your attention sooner or later but you just do not remember when.

THE WITNESS: Yes. That's right.

Q I show you Plaintiffs' Exhibit 19-G which is a letter dated February 26th. Look at the paragraph there referring to Dr. Foley.

Does that refresh your recollection as to when you first heard about Dr. Foley and his group coming in to Blair & Company?

A I think I heard it shortly before this.

Q And from whom did you receive that information?

A To the best of my recollection, somebody at Blair & Company.

Q Well, you know that negotiations were being carried on with Dr. Foley sometime in March and that the loan closed sometime in April, is that right?

A Yes.

Q And you were kept advised from time to time, were you not, as the negotiations with the Foley people went on?

A I think a couple of times. That's all I can remember.

Q Do you remember being asked these questions and making these answers at page 95:

"Q Were you kept advised from time to time as the negotiations with the Foley people went on, as to how the negotiations were progressing?

"A No, not in detail, no.

"Q But were you kept advised as to proposed agreements, proposed arrangements and the like?

"A Yes, generally.

"Q And, as a matter of fact, did you ask to be kept advised as to what was going on with Foley, whether he

was coming in, how much money he was going to bring in, and the like?

"A Yes."

Do you remember being asked those questions and making those answers, Mr. Deignan?

A Yes.

Q Who was the person or persons at Blair & Company who kept you advised of the negotiations with Dr. Foley and his group?

A Mr. Rush, I believe, possibly Mr. Hepburn. And then I believe also Mr. Daley, who was outside counsel for the firm.

THE COURT: Mr. Fried, I think we will break for lunch at this time. I just started my hundredth page of notes. It is a very good time to do it.

(Luncheon recess)

AFTERNOON SESSION

2:00 P.M.

(In open court - jury present)

JOHN J. DEIGNAN, resumed.

THE COURT: Ladies and gentlemen, before Mr. Fried starts again, let me say that of course we will not have court tomorrow, but I am afraid we are getting a little bit behind schedule, and if we continue behind schedule we will have court next Friday afternoon at least and maybe next Friday morning and possibly even next Saturday, not this Saturday but a week from Saturday.

So please do not make any plans for your daughter's marriage or anything a week from Saturday.

DIRECT EXAMINATION CONTINUED

BY MR. FRIED:

Q Mr. Deignan, the last document I showed you is dated February 24th.

Do you recall that was your memorandum regarding your conversations with Fred Stock?

A Yes.

Q May I just go back in the chronology to

February 10th, and I show you a memorandum dated February 10, 1970, marked 58-A, and ask you if you prepared that memorandum, Mr. Deignan.

A Yes, I did.

MR. FRIED: At this time I offer 58-A for identification in evidence.

MR. BROOKS: We have just located our copy, Mr. Fried. Just a second, please.

(Pause)

MR. BROOKS: No objection.

THE COURT: All right. The exhibit is received.

(Plaintiffs' Exhibit 58-A for identification was received in evidence)

Q Do you recall talking to Mr. Rush about Blair improving its capital position in February of 1970?

A Not specifically, sir.

Q Do you recall talking to Mr. Rush at that time about liquidating any of the subordinated capital?

A I can't remember specifically at this time. Whatever is in the memo is the fact.

MR. FRIED: May I read this memorandum?

THE COURT: Yes.

Can you tell us if it is a memorandum to the

files or if it is addressed to someone?

MR. FRIED: It just says "memorandum" and it is dated February 10th.

THE COURT: That would mean it is for the files, is that right?

THE WITNESS: Yes.

MR. FRIED: (Reading)

"This morning, after several unsuccessful attempts, I was finally able to reach Mr. James Rush of Blair & Co. to inquire about the firm's capital situation. Mr. Rush outlined the following steps which will be taken to improve the firm's capital position:

"1. The Blair Fund will be sold to Capital Management, a corporate affiliate of Blair & Co., for approximately $900,000.

"2. The firm's investments, which have no value for capital purposes, will be sold to Capital Management for approximately $1 million.

"3. Subordinated capital, which otherwise would be going out of the firm in the next month or so, will be retained to the extent of about $1 million. This subordinated capital belongs to relatives of insiders for the most part.

"4. An arrangement will be made to sell furniture

and fixtures as well as leasehold improvements to Capital Management for $2,500,000 with a leaseback arrangement.

"5. New capital in the form of secured demand notes will be brought in for amounts ranging between $3 million and $5 million.

"In response to my question Mr. Rush indicated that the first two items will be implemented sometime within the next couple of weeks while the others will require more time.

"According to Mr. Rush, the '1400 edits' are now being processed on a daily basis and have been for some time since the middle of January. '1400 edits' prior to that date are being researched and have been reduced to a net debit of six million as compared to a high of $50 million net debit.

"Mr. Rush mentioned that a Special Financial Questionnaire is due from his firm as of January 31st, as is a Special Operations Questionnaire. I reminded him that we have not yet received a Special Operations Questionnaire as of December 31st and pointed out that the two week extension that was granted expired last Thursday. I directed Mr. Rush to submit the answers to this questionnaire forthwith."

Q That was dated February 10th; is that right?

A Dated February 10th, yes.

Q Mr. Deignan, up to that date, February 10th, had any sanctions been imposed on Blair & Company by the New York Stock Exchange?

A I can't put those restrictions in a time frame at this point. I really don't know whether they were or were not.

Q Well, are you saying that you don't remember or that there were some restrictions put on Blair & Company?

A Somewhere along the line restrictions were put on the firm. I just can't pinpoint the date.

Q Do you know if those restrictions were placed on the firm after April or May or June of 1970?

A No, sir, I don't. I can't pinpoint it.

Q Mr. Deignan, do you remember being deposed on March 8, 1972 in this action and being asked, page 113:

"Q As a matter of fact, the first disciplinary action, if you want to call that -- it isn't really disciplinary -- the first action that was taken by the Exchange was the agreement, getting Blair's consent to the appointment of a liquidator and subsequently the going in of a liquidator?

"A That's right."

Do you recall that testimony?

A Yes.

Q The liquidator was not appointed, was he, until about August or September of 1970?

A I believe it was sometime in September, yes.

Q Do you know now whether or not any disciplinary action was taken by the Stock Exchange?

MR. BROOKS: Your Honor, I think the passage Mr. Fried has just read can only be understood when read in context with the lines above it on that page.

THE COURT: You mean 6 and 7?

MR. BROOKS: Yes, beginning with 6.

THE COURT: Supposing I read that.

It is immediately before the material read by Mr. Fried. It reads"

"Q Blair was never suspended, was it?

"A No, I don't believe so."

And then the question goes on to say "As a matter of fact, the first disciplinary action" and so on.

What does it mean,"suspended," Mr. Deignan?

THE WITNESS: The firm is suspended as a member firm of the New York Stock Exchange.

THE COURT: Does that mean stopped from trading, stopped from operating?

THE WITNESS: No, they are not stopped from operating. But it puts them at a serious disadvantage because now any orders they receive in listed securities must be given to another member firm for execution.

THE COURT: That means that they may operate but that they are deprived of the privileges and rights of a member, is that right?

THE WITNESS: That's correct.

BY MR. FRIED:

Q Mr. Deignan, I show you a memorandum dated March 13th and ask you if your signature or initials appear on that memorandum.

A Yes, they do.

MR. FRIED: I offer it in evidence.

THE COURT: What number is that, please?

THE WITNESS: 60 for identification.

MR. BROOKS: No objection.

THE COURT: All right. It is received.

xxxx (Plaintiffs' Exhibit 60 for identification was received in evidence)

THE COURT: I take it you prepared this memorandum, is that right?

THE WITNESS: Yes, sir.

Q Mr. Deignan, looking at 60, does it appear from that memorandum, which you made on March 13th, that the capital ratio was then 38 to 1, or 38-1/2 to 1?

A If that's what the figures show. I didn't read it thoroughly. I just answered your question.

THE COURT: Why don't you just read it to him, Mr. Fried? It is not going to change if Mr. Deignan reads it.

MR. FRIED: This is a memorandum dated March 13, 1970 addressed to Fred J. Stock.

Q And he is vice-president of the New York Stock Exchange.

A Vice-president or assistant vice-president, one or the other.

MR. FRIED: (Reading)

"This will confirm the information I mentioned to you verbally about the capital position that Blair & Co., Inc. has as of January 31, 1970. Our examiner has made the computation based on figures made available to him by the firm which he did not check since this would be a time-consuming process.

"Aggregate indebtedness 105,959,000, net capital 2,750,000, requirements 5,297,950, deficiency

2,543,950, ratio 3, 848."

And that is approximately 38-1/2 percent to 1; is that right? 38-1/2 to 1?

A Right.

Q (Reading) "We cannot vouch for the accuracy of these figures. Hopefully the deficiency is on the high side, but again we cannot be sure. The examiner will stay at the firm and devote his time to refining these figures so that we can come up with a more realistic answer. JJD."

Do you know why the figures could not be -- the accuracy of the figures could not be vouched for?

A Probably because the examiner was working from figures that were given to him by the firm, that he had not vertified himself.

Q At that time had you heard that the books and rcords of Blair & Company had been out of control?

A I don't think I heard it exactly in those terms.

Q Had you heard that there was some difficulty with the books and records of Blair & Company?

A Oh, yes.

Q Mr. Deignan, I show you memorandum -- I am going back now to March 6, 1970 -- marked 59-A for

identification and ask you if you remember seeing that memorandum.

(Pause)

THE COURT: The question is do you remember seeing that memorandum?

THE WITNESS: Yes, I'm sure I remember that.

Q Was that prepared by your assistant?

A Yes.

MR. FRIED: I offer that in evidence.

THE COURT: Which assistant?

THE WITNESS: Dirks.

MR. BROOKS: We don't have a copy of that yet, your Honor.

(Pause)

MR. BROOKS: No objection.

THE COURT: Received.

(Plaintiffs' Exhibit 59-A for identification was received in evidence)

Q Do you recall attending a meeting on March 6th, as indicated in this memorandum, Mr. Deignan?

A Not specifically, but I'm sure I was there.

MR. FRIED: May I read this, your Honor?

THE COURT: Yes, but I hope you are not going to read the whole thing. It looks pretty dense.

MR. FRIED: Well, it is important, your Honor. This is a memorandum dated March 6, 1970.

(Mr. Fried read to the jury from Plaintiffs' Exhibit 59-A in evidence)

Q Who is Joe Kaspureck and Dennis Dirks?

A Dirks was my assistant, Kaspureck was one of the Exchange examiners.

(Mr. Fried continued reading from Plaintiffs' Exhibit 59-A in evidence)

Q Mr. Deignan, at that time had you know that Schwabacher and Blair had merged for more than a year prior to that date?

A Yes, I am sure I did.

Q This statement, "Blair was experiencing problems with its records because it recently acquired Schwabacher & Co." was inaccurate, was it not?

A It sounds very much like it, yes,sir.

Q I will just read the last paragraph:

"Because their computer records are meaningless at this point, Rush petitioned the Exchange for a new date for filing their questionnaires, they wished to file at the end of April. Deignan stated that he would have to discuss the situation with staff members before reaching any decision and upon his motion the meeting ended."

Do you recall making that statement at that meeting, Mr. Deignan?

A Not specifically.

Q Do you recall any discussion there regarding the computer records being meaningless?

A I don't remember at this point in time, no.

MR. FRIED: May I have 61 for identification.

Q Mr. Deignan, I show you a letter dated March 16, 1970, Plaintiffs' Exhibit 61 for identification and ask you if you recognize that letter.

A Yes.

Q Was that sent by Mr. Bishop to Blair & Company?

A Yes.

THE COURT: Bishop to Blair & Company, is that what you say?

MR. FRIED: To Blair, yes.

I offer that in evidence.

MR. BROOKS: No objection.

THE COURT: All right, received.

(Plaintiffs' Exhibit 61 for identification was received in evidence)

THE COURT: May I see it, please.

(Pause)

Q Mr. Deignan, in this letter, Plaintiffs' Exhibit 61, reference is made to the fact that the capital ratio was then 38-1/2 to 1; is that correct?

A That's correct.

Q And in this letter Mr. Bishop states, "The figures were not checked back to the detailed records and I fully recognize that the deficiency indicated is not a reliable figure and may be more or less depending upon further refinements of the basic information. However, until such time as a more reliable figure can be computed I feel it is essential that Blair & Company take immediate steps to inject new capital to the extent of $3,500,000."

Was that information of $3,500,000 of new capital required by Blair related to you?

A Yes, because I prepared that letter from Mr. Bishop's signature.

Q So you were aware of the fact that this letter

was going out over Mr. Bishop's signature and you were asking Blair & Company to raise an additional three and a half million dollars; is that correct?

A That's correct.

Q You were quite interested in seeing that capital came into Blair & Company, weren't you, from Dr. Foley and his group?

A I was interested in seeing Blair get back into capital compliance.

Q Well, were you interested in seeing whether ornot the money came from outside investors?

A I had no particular interest in where it came from whether it came from recompiling differences and thus increasing capital, getting secured demand notes from insiders, or wherever.

Q Do you remember being asked these questions and making these answers.

Question is 104, in Foley v. New York Stock Exchange.

"Q Can you explain how it happens that that liqudation did not take place until after the Foley $2 million-plus in securities came in?

"A Offhand, I can't, no.

"Q Isn't it a fact, Mr. Deignan that the Exchange

wanted Foley's money in Blair?

"A Well, not as such. We certainly wanted money in the firm. We didn't care particular whose it was.

"Q As a matter of fact, you didn't care whose it was?

"A That's right.

"Q You weren't particularly interested in Foley just as long as you could get money in, as much as you could get?

"A Yes."

Do you remember being asked those questions and giving those answers?

A Yes.

Q You knew, didn't you, that at that time Blair was negotiating with the Foley group?

THE COURT: As of March 16th, Mr. Deignan.

A Yes.

Q Did you communicate in any manner, shape or form with Dr. Foley or any of his group?

A I had no contact with Dr. Foley or any of his group.

Q Mr. Deignan, I show you a letter on the stationery of Blair & Company, addressed to you and ask you if you received that about March 23, 1971.

THE COURT: What number?

MR. FRIED: It's marked Plaintiffs' Exhibit 62 for identification.

A Yes. I remember receiving it.

MR. FRIED: I offer it in evidence.

MR. BROOKS: No objection.

THE COURT: All right.

(Plaintiffs' Exhibit 62 for identification was received in evidence)

THE COURT: May I see it after it is marked?

(Pause)

Q Do you recall receiving with this letter drafts of certain documents from Mr. Richardson, who was the attorney for Blair & Company at that time?

A Yes. I believe they were attached.

Q In that letter it says, "We hope in the next day or two to execute with Dr. John P. Foley, Jr. agreements substantially in the form of the enclosed drafts in order to obtain from Dr. Foley a loan of securities having a market value of approximately $4 million. Mr. Fred Stock suggested that we send these drafts to you in the first instance with a view to your being able to expedite their clearance to the point where we can get them executed. Most other documents,

including Dr. Foley's long form application will be filed very shortly."

Do you remember having any conversation with Mr. Fred Stock about those agreements that were sent with this letter of March 23, 1970?

A No, I don't.

Q Did you examine those documents at that time?

A No, I didn't.

Q The expression here "They were sent to you in the first instance with a view to being expedited for clearance" -- what does that mean?

A Well, instead of sending them to the Documents Division, as would normally be the case, they were sent to me so I could expedite their handling by the Document Division.

Q So that acting as an expediter, what would you do: Take them to some of the chief executive officers of the Stock Exchange?

A No. I would refer them to the manager of our Documents Division.

THE COURT: And ask him to put them on the top of the file instead of the bottom of the file?

THE WITNESS: Yes. That's right.

Q Told them to give this quick action, right?

A Yes.

THE COURT: That did not necessarily mean you approved or disapproved?

THE WITNESS: No.

Q Mr. Deignan, I show you a letter on the letterhead of Blair & Company dated March 24, 1970, which is addressed to you, which I have marked Plaintiffs' Exhibit 62-A for identification and ask you whether you recall receiving that letter.

MR. FRIED: It is dated March 24th.

A I don't remember specifically receiving it, but I'm sure I did.

MR. BROOKS: No objection to the offer of the March 24th letter.

THE COURT: All right. Received. 62-A.

(Plaintiffs' Exhibit 62- A for identification was received in evidence)

THE COURT: That includes the attachment to it, Mr. Brooks, or not?

MR. BROOKS: The single attachment, yes.

THE COURT: All right.

Q Mr. Deignan, do you recall any conversation with Mr. Richardson about March 24th about Amicon stock?

A Not specifically, no.

Q Do you recall that the Amicon stock was submitted or deposited by the Foley group with Blair & Company?

A No. I don't know that to this day.

Q Look at the suggested form of letter and tell us whether that refreshes your recollection of having seen that letter.

A Well, I remember receiving the letter and presumably the attachment. At this point I can't make any connection with what I --

Q Do you have any present recollection about having discussed the Amicon stock?

A No.

Q With anyone at the Stock Exchange?

A No. A situation of this kind would be referred to our Finance Division.

Q I show you Exhibit 63 for identification, which refers to the same subject matter and I ask you if you recall receiving that letter.

A Well, again I don't remember specifically receiving it, but since it was directed to me I undoubtedly did.

MR. FRIED: I offer that in evidence.

MR. BROOKS: No objection, your Honor, to the

letter or the attachment.

THE COURT: Very good.

(Plaintiffs' Exhibit 63 for identification was received in evidence)

THE COURT: May I see it, please?

(Pause)

THE COURT: All right.

Q This letter, 62, which is the day before the letter I have just offered in evidence, has a statement, "We are also told that this form" -- which is the form of the letter attached to the letter -- "was approved by the Exchange upon the request of another member firm several months ago."

Were you aware of that at that time?

A No.

Q In any event, this letter, which was written by Mr. Richardson to you, sent you a form of a letter which was to be sent to a major bank, is that correct, for the purpose of raising money on Amicon stock?

A That's --

MR. BROOKS: May I correct you, Mr. Fried. I believe it was to be sent by a major bank.

MR. FRIED: I am sorry. By a major bank. Maybe I better read this, so we will know what we are talking about:

"Dear John" --

Q The "John" is you?

A Yes.

(Mr. Fried read to the jury from Plaintiffs' Exhibit 63 in evidence)

Q Annexed to this letter is a proposed form of a letter on the letterhead of a major bank addressed to Dr. John P. Foley, Jr.

(Mr. Fried continued reading to the jury from Plaintiffs' Exhibit 63 in evidence)

Q Do you recall now whether you had any conversations with Mr. James Rush that morning or in the afternoon regarding this matter?

A I have no specifica recollection of it, no.

Q The next day you received this letter from Mr. Richardson with a revised form of letter to be issued; is that correct?

A The date would so indicate, yes.

Q But you have no recollection of it?

A No.

Q Would you look at the penciled notation or handwritten notation at the bottom of that letter and tell us if that is in your handwriting.

A No; it's not.

Q You recognize the handwriting?

A Not the handwriting, but I can identify the initials.

Q Whose initials are they?

A Robert Spies.

Q What position did he have with the Stock Exchange?

A He was the senior man in our Finance Division.

Q I wonder if you could read that out loud, please.

A The handwritten --

Q Just the handwritten portion.

A "Discussed penciled changes with Jim Richardson who also indicated further changes from lenders point. A revised draft will be sent".

And then it bears Spies' initials and the date, 3/31.

Q Do you know whether or not the Amicon stock was ever accepted as collateral for purposes of computing the net capital in Blair?

A No, I don't, sir.

Q Mr. Deignan, I show you a memorandum and ask you if your initials appear at the bottom of that.

A Yes. Those are my initials.

MR. FRIED: I ask that that be received in evidence at this time.

MR. BROOKS: What is it?

MR. TURETSKY: 64.

MR. BROOKS: I don't know what it is.

(Pause)

MR. BROOKS: No objection.

THE COURT: Received.

(Plaintiffs' Exhibit 64 for identification was received in evidence)

MR. FRIED: May I read this, your Honor?

THE COURT: Yes.

(Mr. Fried read to the jury from Plaintiffs' Exhibit 64 in evidence)

Q Did you make that memorandum on April 3rd, Mr. Deignan?

A Either that day or the next business day.

Q Well, the next business day was Saturday.

A Not for us, sir. Not for us. We were closed.

Q You were closed?

A Yes, sir.

Q Did you know on April 3rd, on Monday there was going to be a meeting of all the secured demand -- I am sorry -- that on Monday there would be a determination

made as to the priority of the liquidation of securities underlying the secured demand notes?

A I must have, sir. That's what I recorded.

Q Mr. Deignan, didn't you insist --

MR. FRIED: I withdraw the word "insist".

Q Didn't you request Blair & Company to see that the inside subordinated lenders' positions were liquidated?

A I think there was a letter that went out to that effect, over Mr. Bishop's signature.

Q Do you know whether or not it is a fact that during the week of April 6th, which was the following Monday, the positions of the inside subordinated lenders were in fact liquidated?

A I don't know it as a fact at this point, no.

Q Well, is it a fact -- do you know whether it is a fact that that liquidation was done at the insistence of the Stock Exchange?

A Insistence is a rather strong word. It may very well have been at the suggestion of the Stock Exchange.

Q Was it done at the direction of the Stock Exchange?

A Whatever the letter stated.

THE COURT: Which letter are you referring to?

A -- should be done.

THE WITNESS: There was some letter, some exhibit here.

THE COURT: Is that the letter that you mentioned Mr. Bishop sent?

THE WITNESS: Yes, sir.

MR. BROOKS: We both have a letter dated April 1st.

THE COURT: May I ask Mr. Deignan -- I will wait until Mr. Fried can listen to me --

MR. BROOKS: Mr. Turetsky gave me this morning an April 1st letter to which I believe the witness was referring.

MR. FRIED: Will you bear with me a moment. I have a lot of letters.

THE COURT: Try to find a letter by Mr. Bishop to Blair.

MR. BROOKS: It is in evidence as Exhibit 19-J, your Honor.

THE COURT: Well, at least you think it is. Let's put 19-J before him and see if that is the one he is referring to.

MR. FRIED: It is 19-J, your Honor.

THE COURT: Will you show it to Mr. Deignan

and see if that is what he is referring to.

THE WITNESS: Yes. This is the letter.

THE COURT: Is that dated April 1st?

THE WITNESS: April 1st, 1970.

THE COURT: Is that the one that says that they should increase capital by $3 million to make up for the apparent deficiency of $3 million?

THE WITNESS: No, this is a different letter.

THE COURT: May I see it?

MR. FRIED: This is a different letter, your Honor.

THECOURT: Would you refer to the material in the letter that you are talking about, Mr. Deignan.

THE WITNESS: May I read it?

THE COURT: Read the material that you are referring to. If you are referring to the whole letter, read the whole letter.

THE WITNESS: It's addressed to Mr. Hepburn at Blair & Company and signed by Robert Bishop.

"This is a followup on the telephone conversation you and your associates had today with John Deignan of our staff.

"It is my understanding that a capital computation as of February 28, 1970, indicates that Blair

& Co., Inc. has a capital deficiency of $3 million, reflecting an improvement of approximately $1,400;000 from the deficiency of $,400,000 as of January 31, 1970.

"We know that for some time you have been making efforts to improve the capital position of your firm, but you will realize, I am sure, that we cannot permit your firm to continue in violation of Rule 325.

"Accordingly, we must insist that immediate steps be taken to insure that Blair & Co., Inc. is in compliance with Rule 325 by the close of business on Friday, April 3, 1970. It would appear to us that the most logical way to accomplish this is to liquidate the collateral behind the secured demand notes of members and allied members of your firm."

THE COURT: Thank you.

MR. FRIED: The letter goes on to say,

"We understand that as an alternative you are endeavoring to expedite completion of the Foley borrowing to the extent of $2 million of capital value. We must point out that such borrowing can only be considered as good capital by Friday. If proper documentation is in our hands on or about that day.

"I understand further in an agreement in principle has been reached with former partners of

Schwabacher & Company whereby collateral behind their secured demand notes is to be liquidated resulting in an increase in net capital of $1,200,000."

Q Now, were you aware at that time, that is, on April 1, 1969, that some direction had been made to liquidate the insider holdings at Blair & Company?

MR. BROOKS: I object to that characterization.

THE COURT: I will sustain the objection. You mean was he aware of the situation?

Q Yes--

A Well, my name appears on the letter as the preparer of it.

THE COURT: May I ask one more question.

Earlier you said that you believed that the liquidation which took place on April 6th was in accordance, let's say -- even though you didn't use that word -- with the substance of the letter you just read. Is that correct?

THE WITNESS: Yes.

THE COURT: Now, is that belief on your part, was that belief on your part caused simply by the sequence of events, namely that you sent the letter, and then on April 6th the liquidation occurred or was your conclusion caused by the fact that somebody at Blair told you that

they took the action they took -- that's why they took the action they took?

THE WITNESS: I am sorry, sir. I just don't quite follow that.

THE COURT: You said you believed that what Blair did on April 6th was caused by the letter of Mr. Bishop of April 1st.

THE WITNESS: That's right.

THE COURT: What makes you come to that conclusion?

THE WITNESS: Because of the substance of this letter.

THE COURT: But you were not told by anybody at Blair that that is why they did what they did?

THE WITNESS: No.

THE COURT: I am not saying you are wrong. I just want to make sure what the cause of your conclusion was.

Thank you.

Q Mr. Deignan, did you attend the closing of the Foley loan on April 3rd?

A No, I didn't.

Q When you spoke to Mr. Daley, did you call him at the Blair office or the Mudge, Rose office?

A I don't remember whether I called him or whether he called me. I just don't know.

Q In any event you called him about a quarter to five in the afternoon of April 3rd?

A That's what the memo indicates, yes.

MR. FRIED: May I offer at this time 19-J-1, which is a copy of the same letter addressed to Mr. Hepburn, but it has some -- something else on the second page.

(Pause)

MR. FRIED: I offer at this time, which I think is an accurate copy, the letter which was sent by the Exchange to Mr. Hepburn as 19-J for identification.

MR. BROOKS: We have no objection, your Honor. One appears to be the file copy which was retained from the Exchange and the one now being offered appears to be actually the signature copy, bearing Mr. Bishop's hand-written signature.

THE COURT: All right.

MR. FRIED: This is just supplementing 19-J.

THE COURT: The only thing it has that the other one does not have is the signature, is that it?

MR. FRIED: And there is a little logo there too.

THE COURT: Good.

(Plaintiffs' Exhibit 19-J-1 for identification was received in evidence)

Q The logo I referred to appears at the bottom of this letter: "Own your share of American business."

Is that the logo of the New York Stock Exchange?

A It was at that time, yes.

Q How long before April 1st had you been discussing the liquidation of the subordinated accounts of

Blair? Do you recall, Mr. Deignan?

A No, I don't.

Q It is a fact that you had been pressuring them, however, to liquidate those accounts, is it not?

A The only thing that I know is what appeared in that letter that you just gave me, in which I read part of it and you read the other part. I don't remember any discussions prior to that.

Q Mr. Deignan, do you remember, when you were examined on March 8, 1972 in this action, testifying, at page 103, as follows:

"Q And isn't it a fact that within one week from April 3, 1970 the subordinated accounts of Blair were liquidated to the extent of all the insider accounts at the demand of the Stock Exchange?

"A I don't remember specifically, but that is probably because we had been pressuring them for some time to do it."

Do you remember being asked that question and making that answer, Mr. Deignan?

A No, I really don't. But if it is there in the record, I said it.

Q Now my question to you is, do you now have any recollection for how long a period of time you were

pressuring Blair to liquidate the insider subordinated accounts?

A No, I don't.

Q Isn't it a fact too, Mr. Deignan, that the liquidation took place at the request or direction or insistence of the Exchange because of the failure of Blair to comply with the net capital rule?

A Well, that's what the letter indicated, yes.

Q Do you have any recollection, outside of that, that you were in contact with anybody at Blair & Company?

A At this point I don't have any recollection.

Q Do you remember being asked this question and giving this answer in this case in the same deposition, page 104:

"Q And wouldn't it be correct to state, Mr. Deignan, that thatliquidation took place at the insistence of the Exchange because of a failure of Blair to comply with the net capital rule?

"A That was certainly at the direction of the Exchange, yes."

Do you remember being asked that question and giving that answer?

A Not specifically. But if that's what the record shows, I'll adopt it.

Q (Reading)

"Q Can you explain how it happens that the liquidation did not take place until after the Foley $2 million-plus in securities came in?

"A Offhand I can't, no."

Do you remember being asked that question and giving that answer, Mr. Deignan?

A Not specifically, no.

Q (Reading)

"Q Isn't it a fact, Mr. Deignan, that the Exchange wanted Foley's money in Blair?

"A Well, not as such. We certainly wanted money in the firm. We didn't care particularly whose it was."

THE COURT: Mr. Fried, I think you brought this to the jury's attention once.

MR. FRIED: Sorry.

Q Do you remember being asked this question

"Q The question that I'm asking you, Mr. Deignan," page 108, "is why the Exchange permitted the Foley money to come in. That is why I'm asking, in view of Blair's condition.

"A I just can't answer that question, not of my own personal knowledge.

"Q You don't know why?

"A No."

Do you remember being asked those questions and making those answers?

A Yes.

Q Mr. Deignan, I show you a letter dated April 7, 1970 and ask if you prepared that letter for Mr. Bishop's signature. It is marked 65 for identification.

A Yes, I did prepare it.

MR. FRIED: I offer it in evidence.

MR. BROOKS: No objection.

THE COURT: Received.

(Plaintiffs' Exhibit 65 for identification was received in evidence)

MR. FRIED: May I read this, your Honor?

THE COURT: Go ahead.

MR. FRIED: "It is a letter dated April 7, 1970 on the stationery of the Stock Exchange addressed to Mr. Benjamin H. Hepburn of Blair & Company.

"Dear Mr. Hepburn: It is my understanding that despite my letter of April 1, 1970, Blair & Co., Inc. did not bring its capital into compliance with Rule 325 by the close of business on Friday, April 3, 1970 and

still continues in violation. These facts will be incorporated in a memorandum of charges which will be brought against Blair & Co., Inc. by this department for violating the Exchange's minimum capital requirements.

"Let me again make it clear that we expect Blair & Co., Inc. to take immediate steps to comply with Rule 325. You are hereby directed to refrain from opening any new accounts for customers until this has been accomplished."

Q Mr. Deignan, do you recall whether or not this is the first time the New York Stock Exchange took any action against Blair & Company during the year 1970?

A Action of what sort, sir?

Q Action of any sort, by any written communication telling them they should shut down or do something else.

THE COURT: You mean the last sentence of the letter?

MR. FRIED: That's right.

THE COURT: The last sentence says that they can't take any new accounts.

A To the best of my account, that is the first restriction that was placed on them.

Q You said to the best of your account. Do you

mean to the best of your recollection?

A Yes, to the best of my recollection.

Q Mr. Deignan, I show you a letter dated April 7, 1970, which is addressed toyou, and ask if you received it from Blair & Company. It is marked Plaintiffs' Exhibit 66 for identification.

A Yes, I received it.

MR. FRIED: I offer that in evidence.

MR. BROOKS: No objection.

THE COURT: Received.

(Plaintiffs' Exhibit 66 for identification was received in evidence)

Q Without reading the letter, that letter encloses twelve different documents that were signed at the Foley closing on April 3rd, is that correct?

A Yes, I presume that it did.

Q Mr. Deignan, I show you a memorandum dated April 7, 1970 marked 66-A for identification and ask you if you prepared that memorandum and if your initials appear on the second page of it.

A Yes, I prepared it and my initials appear on it.

MR. FRIED: I offer it in evidence.

MR. BROOKS: No objection.

THE COURT: Received.

(Plaintiffs' Exhibit 66-A for identification was received in evidence)

MR. BROOKS: What was the date on that, please?

MR. FRIED: April 7th.

Q Mr. Deignan, when you prepared this memorandum, you gave effect to the $2 million of the Foley loan coming into Blair, did you not?

A I didn't read the memo when you gave it to me, sir. If that's what it says, that's what I did.

MR. FRIED: May I read this, then, your Honor?

THE COURT: Yes.

MR. FRIED: This is a memorandum dated April 7, 1970. The second page has a line "JJD." The initials JJD are signed.

"This morning I spoke with Mr. Joseph Daley of Mudge, Rose, Guthrie & Alexander about the status of the Blair & Co., Inc. situation and he provided the following information:

"Yesterday Mr. Daley met with representatives of the New York Regional Office of the SEC, including Messrs. Moran, Barton, Block and Churnis. At that time

he presented a capital position of Blair & Company as of February 28, 1970 indicating a deficiency of $4,513,000. This deficiency has been reduced by the Foley loan of $2 million capital and $899,000 released by cash substitutions for secured demand note collateral.

"The SEC has directed that by Thursday of this week definite steps must have been taken by the firm to clear up the entire capital deficiency plus an additional $500,000 cushion.

"According to Mr. Daley, approximately $5,100,000 can be released for capital purposes by the conversion of secured demand note collateral to cash. Yesterday" -- this was April 6th -- "the directors of Blair & Co., INc. voted to effect conversion of 75 percent of this amount, which should be sufficient to meet the SEC directive.

"The Schwabacher directors have not as yet agreed to this arrangement, but there seems to be no alternative to their doing so. There is one problem which is traceable back to the original escrow agreement in connection with the takeover of Schwabacher & Company which provides for the return of money to certain Schwabacher partner who did not join the merged corporation. This involves between 250 to $300,000. As soon as this problem is solved, Mr. Daley is sure that the

Schwabacher directors will fall in line with the conversion of secured demand note collateral.

"Mr. Daley acknowledged that Blair & Co., Inc. has not met the Exchange's directive in meeting capital requirements by the close of business last Friday, but he asked, however, if we would go along with the same timetable accepted by the SEC.

"In response to my question, Mr. Daley could give no assurance that all of the necessary liquidation would be accomplished by Thursday of this week but that he intended to urge the firm to proceed as rapidly as possible. The firm is under obligation to demonstrate to the SEC that substantial progress is made by Thursday to meet capital requirements.

"Mr. Daley will be sending to me a copy of the capital computation he provided the SEC. He will also make arrangements to have submitted to the Exchange the documentation on the Foley borrowing, including the 'knowledgeability' letter."

Q The knowledgeability letter is in quotes. Do you remember preparing that memorandum?

A Yes, I did prepare it.

Q And do you remember, when you talked with Mr. Daley, his telling you about having gone to the SEC the

day before, yesterday, that the liquidation of the subordinated security holders in Blair & Company had already been voted on April 6, 1970?

A I don't remember anything other than what appears in that memo, and I don't remember that specifically. But that's the record.

Q To your knowledge, was April 6th the first time that Mr. Daley or any other representative of Blair & Company went to the SEC?

A Can I hear the question?

THE COURT: Can we put it differently? Do you know whether --

Q Do you know whether, when Mr. Daley went to the SEC on April 6th, that was the first time anyone from Blair reported the problems that they encountered at Blair & Company?

A I don't know.

Q Did you or any representative of the New York Stock Exchange advise Mr. Foley on Monday morning that the inside secured noteholders' positions were going to be liquidated?

A I didn't.

Q To your knowledge, did any9ne at the New York Stock Exchange advise Dr. Foley or any of his group on

Monday morning, the very next day after the loan closed, that the inside subordinated lenders' positions at Blair & Company were going to be liquidated?

A I don't know.

Q I show you a copy of a letter dated May 1, 1970 addressed to Blair & Company and signed by Linda E. Strubb, Finance Specialist.

Was she employed by the New York Stock Exchange?

A Yes, she was.

Q Was she in the Documents Division?

A No. She was in the Finance Division.

Q Do you recall seeing that letter?

A No, I don't.

Q Do you know whether or not that letter was sent to Blair & Company?

A No, I don't.

MR. FRIED: Mr. Brooks, do you have any objection to having this letter in evidence?

MR. BROOKS: No.

THE COURT: All right.

MR. FRIED: 67 for identification.

(Plaintiffs' Exhibit 67 for identification was received in evidence)

MR. FRIED: This is a very short letter. I would like to read it, your Honor.

THE COURT: Yes.

MR. FRIED: It is a letter addressed to Blair & Company, Attention Mr. James Rush, dated May 1, 1970.

"Gentlemen: According to our records, we have not received a response to our letters of March 5th and April 8th, 1970 regarding your response to the September 26, 1969 financial questionnaire.

"As this matter has been pending for some time, we expect that you will reply within ten days."

Signed "Linda E. Strubb."

Q Mr. Deignan, do you know what was the normal time for receiving responses to financial questionnaires?

MR. BROOKS: Your Honor, if Mr. Fried is suggesting that's what the letter is talking about, I object to his characterization of the letter.

THE COURT: I think he is using the phrase the letter uses, isn't he?

MR. BROOKS: No, he is not. That is my objection.

THE COURT: Will you use that phrase, please, whatever the letter describes?

MR. FRIED: It merely says, "We have not received a response to our letters of March 5th and April 8, 1970 regarding your response to the September 26, 1969 financial questionnaire."

My question to Mr. Deignan is, does he know what the usual time was for responding to financial questionnaires.

THE COURT: Does your objection stand?

MR. BROOKS: I object to the form of the question.

THE COURT: Do you know to what this refers, the September 26th financial questionnaire?

THE WITNESS: I think so, generally.

THE COURT: Was that a normal questionnaire?

THE WITNESS: I can't tell from this whether it was the so-called Special or whether it was the regular, the audited one.

THE COURT: The regular one would be audited, the Special would be non-audited, is that right?

THE WITNESS: Yes.

THE COURT: Will you tell us what --

THE WITNESS: The only one I can recall now, the time period for the regular, the audited, was forty-five days after the commencement of the audit.

THE COURT: Would the time period for answers to its Special Questionnaire ordinarily, in your opinion, be longer or shorter?

THE WITNESS: They would be less, sir.

Q I show you a letter dated May 7, 1970, Plaintiffs' Exhibit 68 for identification, and ask you if you know who William G. Carr was in 1970?

A He was the manager of the Documents Division.

Q Was that a copy of a letter that was sent out by Mr. Carr?

A It appears to be.

MR. FRIED: I offer it in evidence.

MR. BROOKS: No objection.

THE COURT: All right.

(Plaintiffs' Exhibit 68 for identification was received in evidence)

Q Mr. Deignan, by May 7, 1970, do you know if the inside subordinated lenders' position had been liquidated?

A I don't know it at this point, no.

Q In this letter a statement is made, "The option agreements and knowledgeability letter are confusing inasmuch as Dr. Foley's note obligation is not subordinated."

Do you know what that means?

A No.

THE COURT: We will take an afternoon recess at this time, Mr. Fried.

(Recess)

Q Mr. Deignan, I show you a memorandum dated May 11, 1970, which has your initials, and I ask you if you recall preparing that memorandum.

THE COURT: Does it have a number?

MR. FRIED: It is marked Exhibit 69 for identification.

A I prepared the memorandum.

MR. FRIED: I offer it in evidence.

MR. BROOKS: No objection.

THE COURT: Received.

(Plaintiffs' Exhibit 69 for identification was received in evidence.)

THE COURT: May I see it?

(Pause.)

MR. FRIED: May I just read this? It's very short, your Honor.

THE COURT: Yes.

(Mr. Fried read to the jury from Plaintiffs' Exhibit 69 in evidence.)

Q Does that ratio mean 27-1/2 or thereabouts to 1?

A Yes.

Q Is it not a fact that this statement or information you received includes the Foley capital?

A I can't tell from this document, sir.

A 755

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Q Is it not a fact that this document was prepared after the liquidation of the insider subordinated lenders' accounts?

A Presumably, yes.

Q Mr. Deignan, I show you four sheets of paper marked Exhibit 70 for identification and ask if you can identify those papers.

A These are commonly referred to as "white sheets". They are --

Q Are they in your handwriting?

A No; they are not.

Q Do you know who prepared those white sheets?

A There's a signature on the last page: J. M. Kaspareck.

Q Can you tell us who that person was?

A He was one of the Exchange's examiners.

Q Do you recognize the work sheets as his?

A No. I don't know his handwriting. I just see his name on the bottom of it.

Q Do you notice any handwriting on the first page, the very first page, Mr. Deignan?

A Yes; there is --

Q Is that in your handwriting?

A No; it's not.

MR. FRIED: I offer that document in evidence.

MR. BROOKS: No objection.

THE COURT: It is received.

(Plaintiffs' Exhibit 70 for identification was received in evidence.)

Q On the first page here, if I can make this out, it says:

"Not commented on as firm being handled by special coordinator and under close observation."

Is that correct?

A That's what it reads, yes -- that's how it reads.

Q Whose initials are those on the first page?

A Linda Strub.

Q Was she employed by the Stock Exchange at the time?

A Yes.

Q Do you know what the special coordinator referred to in that screed means?

A I believe it refers to me, yes.

Q What does "close observation" mean?

THE COURT: You mean, does it have any special meaning in the Stock Exchange?

MR. FRIED: Yes.

A No; it has no special meaning.

Q In that document, do you see what the capital ratio

is?

A Yes.

Q And in that document it speaks as of what date?

A It looks like it's as of January 31, 1970.

Q And what is the capital ratio shown on these white sheets, Plaintiffs' Exhibit 70?

A 13,012 per cent.

Q Does that mean 130 to 1?

A Yes.

Q On the "close observation", does that have any reference to the fact that there was a Stock Exchange representative at Blair & Co. on a daily basis at that time?

THE COURT: I think the question is inappropriate. Ask him if the phrase has any special meaning to him.

Q Isn't it a fact that you had a representative at Blair & Co. from day to day?

A To my knowledge and recollection, ther- was one man there for some of the time. There was a period where he was ill, and he was not there, but he was there a substantial period of time.

Q And do you know the name of that man?

A Kirchenblatt.

Q Wasn't Mr. Kirchenblatt there, except for the time he was sick, from day to day, from some time in January until

after April 1970?

A Yes.

Q What was his function in going to Blair on this daily basis?

A Well, it relates back to an exhibit that you introduced a while back, that we send an examiner to the firm, and my memorandum to Ed Carley gave instructions to that effect.

Q Now, what does the examiner do when he goes to a firm like Blair & Co.?

A Well, if I remember the memorandum correctly, number one, was to check on the progress of the conversion. I forget what the second area was.

Q Was he to check on the question of capital ratio compliance?

A I believe he was working on that aspect also.

Q Was he to check on the question of the security differences?

A I don't remember that specifically, no.

Q Was he to check on the question of whether or not securities were properly segregated?

A In the ordinary course, an examiner would make a spot check of that area.

Q Mr. Deignan, I show you Exhibit 72 for identification and ask if you recall receiving that memorandum or

seeing it at about April 23, 1970?

A Yes. I saw it.

MR. FRIED: I offer that in evidence.

MR. BROOKS: No objection.

THE COURT: All right.

(Plaintiffs' Exhibit 72 for identification was received in evidence.)

THE COURT: Did you tell us who Mr. Kaspareck is and who Mr. Granis is?

THE WITNESS: At that time, Mr. Granis was the chief examiner, and Mr. Kaspareck was one of the -- was on the staff of examiners.

Q Is it not a fact, Mr. Deignan, that according to this memorandum, the capital ratio is shown as of January 31, 1970, to be also 130 to 1?

A That's what that indicates, yes.

THE COURT: That is dated April 23rd, Mr. Fried?

MR. FRIED: Yes, your Honor.

Q Mr. Deignan, were you aware of the Special Trust Fund set up by the New York Stock Exchange?

A Yes.

Q What was the purpose of the Special Trust Fund?

A Well, it was my understanding that those funds could be used at the discretion of the trustees of the fund

to make customers whole who had been damaged by the failure of member firms.

Q That was basically a fund, as I understand it, set up by the Exchange to reimburse customers -- those are the people who deposit securities and trade on the market; sithat right? They are not the subordinated lenders?

A No; not the subordinated lenders.

Q It is to recompense them, basically, because of losses because of the operations of member firms?

A For whatever the reason was.

Q Was it your understanding in January, February, March and April 1970 that if Blair failed or went out of business, the Special Trust Fund would be called upon to make up certain losses?

A I didn't know that for a fact, because it was my understanding that the trustees made the determination as to whether the fund should be used.

Q Were the problems of Blair & Co. in January, February, March and April brought to the attention of the Board of Governors of the New York Stock Exchange?

A The only answer I can give, sir, is, not by me. I assume t hat they were.

Q Do you remember being questioned on March 8, 1972, as follows: --

MR. FRIED: Page 93, line 16.

Q (Continuing) "Q You also recall that there were subsequent memoranda shown to you in which Blair reported the capital ratio becoming increasingly worse?

"A For a period there, yes.

"Q Right up until April. Until March 31st. Should we go through it again?

"A No; I remember it.

"Q Such being the case, the question that I am asking is whether or not a decision was taken to keep Blair in business regardless of its violation of Rule 325.

"A I don't know.

"Q Was any of this ever reported to the Board of Governors, so far as you know?

"A Yes; I am sure it was.

"Q Was it reported right along?

"A They were kept cognizant of what was going on, yes.

"Q And in what way were they kept cognizant?

"A Either Mr. Bishop or Mr. Stock made reports from time to time.

"Q Is that so far as you know their regular function nd operation?

"A Yes.

"Q And you kept Mr. Bishop and Mr. Stock advised?

"A Right."

Do you remember being asked those questions and giving those answers?

A Yes.

Q Is it not also a fact that for the time that you were supervising or looking after the affairs of Blair & Co. with respect to the Stock Exchange, of course, that you constantly kept after Blair & Co. to file reports?

A That's a fair statement, yes.

Q And isn't it fair to state that they were generally delinquent in reporting to the Exchange?

MR. BROOKS: I object to the word "delinquent", your Honor. I don't think it tells us much about the meaning of the question.

THE COURT: Do you want to use the word "late"?

MR. FRIED: Then I will have to read from his deposition, your Honor.

MR. BROOKS: I object to the same questions, if they are going to be read from the deposition?

THE COURT: Is there such a term as "delinquent" with regard to reports?

THE WITNESS: No; not formally. "Late" would be a better term, I should think.

THE COURT: I suppose sometimes you get incomplete

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reports, too.

THE WITNESS: Yes.

MR. FRIED: I have just a few questions to read on page 94.

Q "Q Would it be reasonable to state, Mr. Deignan, that based on your experience with Blair, that in addition to record-keeping problems, they were consistently delinquent in reporting to the Exchange?

"A Yes.

"Q And that this delinquency continued into 1970?

"A Yes.

"Q They were required to make reports within specified periods of time. Were those reports always made on time?

"A No.

"Q Were they consistently late?

"A They were late. I can't tell you whether it was consistent. What is your definition of 'consistently'?

"Q Do you recall a single instance where Blair ever submitted a single report on time in 1970?

"A I have no recollection either way. I know they were delinquent. Whether they were on time in some instances I am not prepared to say."

Do you remember being asked those questions and making those answers?

A Yes.

Q Now, with regard to this Special Trust Fund, were you aware of the fact that if Blair was able to get more money into its treasury, that fund would be less endangered?

MR. BROOKS: Objection to the question, your Honor. The witness has testified that the fund was a discretionary fund. I don't see how it follows that it would be endangered at all.

THE COURT: I will sustain the objection to this question. You can ask him if he knew what the effect would be on the fund, if any.

MR. FRIED: Well, your Honor, then I will have to read from his deposition, where there is an inconsistent statement made.

THE COURT: Well, he hasn't said anything inconsistent so far. It's a question of what you are entitled to ask him at the present time. It's a question of what would happen to the fund with regard to the subject that you are asking about, and if the answer is inconsistent --

MR. FRIED: I will ask the question:

Q Were you aware of the fact that if Blair was able to get in more money, that the fund was less endangered because Blair would have more money from capital to comply with the net capital rule?

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MR. BROOKS: Objection.

THE COURT: That is precisely what was objected to. I will sustain the objection again.

Q Let me put it this way, Mr. Deignan:

Let's take this specific case, where Dr. Foley and his group put in $2,000,000. In that case, if more money came in from the Foley group into Blair & Co., would there be less risk to the fund?

MR. BROOKS: Same objection. It simply changes the word "endangered" to "risk".

THE COURT: Do you have an opinion as to whether there would be less risk?

THE WITNESS: Well, it has to be based on an assumption. If the Special Trust Fund came into play, the more money that was available at the firm, the less would be the expense to the Special Trust Fund.

THE COURT: Well, what would cause ths Special Trust Fund to come into play?

THE WITNESS: Only if the firm went into liquidation.

THE COURT: All right.

MR. FRIED: May I have just a minute, your Honor, so I can be instructed?

THE COURT: Yes.

(Pause.)

MR. FRIED: I have no further questions, your Honor.

THE COURT: Mr. Brooks?

CROSS-EXAMINATION

BY MR. BROOKS:

Q Mr. Deignan, the last question that I believe the Judge put to you, about what would cause the Trust Fund to come into play: your answer was, if the firm were to go into liquidation.

Wouldn't the logic of your prior answer, that the trust fund was in the discretion of the trustees, require that were the trust fund to come into play, the additional factor that the trustees would vote to assist the firm if it went into liquidation?

A Yes.

Q So that you need those two items, liquidation, assuming along with the liquidation there are distressed customers, and an election by the trustees to exercise their discretion to assist those customers, is that correct?

A Yes.

Q Earlier in the examination by Mr. Fried you testified, after looking at Exhibit 65 in evidence, which is the April 7 letter by Mr. Bishop to Mr. Hepburn chastizing Blair for not getting itself into capital compliance by April 3, as Mr. Bishop had previously directed and then restricting Blair in that last paragraph, I believe you testified that that was the first restriction that you recall having been placed upon Blair in 1970.

Do you remember that?

A Yes, that's right.

Q Mr.Fried neglected to show you what we have come to know in this trial as the March 10 letter, which is Exhibit 15.

I ask you if you would look at Exhibit 15 and tell me whether that refreshes your recollection that Blair had been restricted via that March 10 letter.

A Yes. These were earlier restrictions.

Q Did you perhaps prepare that March 10 letter for

Mr. Bishop's signature?

A I believe I did, yes.

Q Mr. Fried interrogated you a number of times about whether you knew that Blair's records were out of control, or questions to that effect. Do you recall that?

A Yes.

Q Let me show you the third paragraph of the March 10 letter, where it says:

"We are fearful that the records of Blair are in such condition that you are in danger of losing control of customers' accounts and the ability to properly supervise registered representatives."

Did you, at the time you drafted the March 10 letter, have an opinion that there was a serious problem with the control of Blair's records?

A Well, I don't remember specifically, but I would think I did, as reflected by this letter.

Q Do you recall Mr. Fried's question at the start of your examination today, asking you whether the Stock Exchange's approval was necessary for Arthur Young & Company to conduct a split audit of Blair & Company?

A Yes.

Q I believe you answered yes.

A Yes.

Q Did you know, or do you know, whether it was also necessary for the SEC to approve such a split audit?

A I didn't know it at that time, no.

Q Do you know it today?

A I know it today, yes.

THE COURT: You know today that it was necessary then? Is that what you are saying?

THE WITNESS: I know today it was necessary then, yes. I just didn't know it at that time.

THE COURT: Right.

MR. BROOKS: Your Honor, Mr. Fried, when he was discussing Exhibit 19B-2, which are the documents surrounding the approval of the split audit, a memorandum dated May 23, 1969 from Mr. McChesney to Mr. Bishop and a memorandum dated May 19, 1969 from Mr. McChesney to Mr. Bishop, read paragraph 5 of page 2 of the May 19, 1969 memorandum.

I would like to read the remainder. Let me try to compress that. I would like to read the bottom paragraph on page 2 and the top paragraph on page 3, which I believe Mr. Fried did not read, although he did read another part.

This is Mr. McChesney to Mr. Bishop on the question of Arthur Young's request to do a split audit of

Blair in May of 1969. The request was received in May of 1969.

"I am sympathetic to the reasoning of Arthur Young & Co. However, the basic problem appears to me to be that Arthur Young & Co. appears unable to supply adequate numbers of experienced personnel to undertake a combined audit.

"In my discussions with Mr. Olson and with one of his partners" -- who I think has been identified as a partner of Arthur Young in charge of the Blair audit -- "I became convinced that the firm is anxious to undertake the work required by Blair & Co. and wants to do a conscientious and competent job.

"An argument for allowing this type of audit that would be an exception to the NYSE policies and rules is that at this late date it is highly questionable whether any other public accounting firm could assemble enough experienced personnel to complete a thorough examination of the combined firms in 1969.

"We must also consider that should the NYSE" -- meaning New York Stock Exchange -- "grant approval to this request under its own rules, Arthur Young & Co. would still be required to obtain approval from the SEC for an exception to its audit requirements.

"Should the Exchange desire to accommodate the Arthur Young request, it would be advisable to discuss this with the proper authorities at the SEC prior to advising Arthur Young of the New York Stock Exchange's decision."

The May 23 memo, that Mr. Fried did read, shows that the SEC was consulted and they were agreeable to the split audit.

Q Mr. Deignan, from your experience at the Stock Exchange during the time that you were a Coordinator, was it common to have a time lag between the as of date of a capital computation which was made available to you and the date on which that computation became available?

A Yes.

Q Can you tell us the boundaries of the common time lags for having a capital computation become available as of a date in the past?

A Well, the only comment I can make on that is, as I indicated before -- no, I'll withdraw that.

I can't give you a specific answer to that, Mr. Brooks. There is a lag, but how long it is I'm not prepared to say.

Q Let me show you Exhibit 70, which you identified as the white sheet. Exhibit 70, as you testified, provides

a capital computation of Blair & Company as of January 31, 1970.

A Right.

Q Can you tell me on what date that computation became available to you?

A The date on the last page under Mr. Kaspereck's nam indicates "4/27," April 27, 1970, I believe.

Q Could you have received this white sheet prior to that date?

A I doubt it.

Q In this case there is a time lag between the as of date of the capital computation and the date it became available to you as a Coordinator of approximately two and two thirds months.

THE COURT: That's correct.

Q (Continuing) Was this a common time lag in the period late 1969 and early 1970 for these computations to be computed?

A I think that would be indicative of the lag, yes.

Q Mr. Fried discussed with you Exhibit 32A, which either you or he identified as a memorandum to the Advisory Committee of the Board of Governors of the Stock Exchange.

Can you tell me what as of date that memorandum to the Advisory Committee is speaking about when it

discusses Blair's compliance or lack of compliance with Rule 325?

A The as of date is May 31, 1968.

Q Were you aware of any question being raised as to Blair's compliance with the Exchange's capital rule after the as of date of May 31, 1968 up through the end of 1969?

A Referring specifically to this?

Q No. Referring to any other problem about Blair's compliance with the capital rule from and after May 31, 1968 up through the end of 1969.

A No.

Q Mr. Deignan, you testified initially that during the period that we are focusing on for the Blair firm, 1969 and 1970, you were a Coordinator or Supervising Coordinator and that as such your responsibilities were to acquire and prepare reports on the firm and to liaison with your superiors, whom you have identified as Mr. Stock and, above him, Mr. Bishop, is that correct?

A Yes.

Q You had jurisdiction of Blair & Company, did you not?

A Yes.

Q Did you have jurisdiction of any other member firms?

A Yes.

Q How many?

A Well, between 100 and 110.

Q What firms did you have jurisdiction of?

A I had the alphabetical segment A through C and I had several not in that same alphabetical segment, firms located in Chicago -- I think it was Chicago -- and upper New York.

Q Of those firms A through C for which you were the Supervising Coordinator, did others have problems with security differences?

MR. FRIED: I object to the "other" firms. We are only dealing with Blair & Company in this case.

THE COURT: I don't think it will hurt the jury to know.

A Yes.

Q Were security differences a fairly common problem at this time, 1968, 1969, 1970, for firms that did a fairly sizeable retail business, such as Blair?

MR. FRIED: I object to this. There are certain rules and regulations, and a hundred wrongs don't make a right.

THE COURT: The question that the jury will be called upon to determine is whether the supervision of the

Exchange is adequate or not, using informal language at the moment anyway, and I think it is appropriate for them to know what problems existed at that time in reaching that judgment.

I will allow the question.

Q (Continuing) Do you have the question in mind?

THE COURT: We had better have it read back.

(Question read)

A Yes, it was a common problem.

Q Are you familiar with the term 'paper work crunch' or 'paper work crisis'?

A Yes.

Q Will you tell the jury what that term means to you?

A Well, what it meantto me was that because of the volume of trading that occurred in '68 and the inability of firms to cope with the recordkeeping problems that they were inundated with paper, which caused difficulty in recording items and keeping their operations clean.

Q You testified that the Coordinators really didn't have a division but they were a unit of themselves.

A Yes.

Q When did the post of Coordinator start at the Stock Exchange?

A I would think some time in 1967.

Q Do you know why that position was created at the Exchange?

A Because at that point the Exchange recognized that there were operations problems at various member firms.

Q Had these problems existed prior to 1966 or '67?

A I don't remember that. But they were present in 1967.

Q Mr.Fried showed you Plaintiffs' Exhibit 42, which is the report of Mr. Sokolowski, the Examiner, to Mr. McChesney dated January 9, 1969.

Was it a part of the Exchange's regulatory progra for Examiners such as Mr. Sokolowski to make visits to member firms such as is reflected in Exhibit 42?

A Yes.

Q How often did Examienrs make such visits as a normal rule?

A Once a year.

Q What would their mission be on that visit?

A Well, they would ordinarily check out the firm's capital position, check on suspense accounts, difference accounts, spot check segregation, spot check customer accounts for violations of Regulation T or violations of

the Exchange's minimum margin requirements, check on proxy procedures. That's what comes to mind.

Q Would an Examiner, when he had completed his visit, make a report as normal practice?

A Yes.

Q Is that report from Mr. Sokolowski such a report?

A Yes, except, as indicated, it is what they termed "a limited examination." He was just concentrating on capital and difference accounts.

Q You testified that, as set forth in your January 16, 1970 memorandum, another Examiner was despatched to Blair to check certain problems, such as the progress in the conversion to the Midwest Exchange System and their capital condition.

Was that a regular visit, such as Mr. Sokolowski's of the year before?

A No. This was, you know, a specific visit at my request.

THE COURT: That is the man whose name begins with a K?

THE WITNESS: Kaspereck?

MR. BROOKS: Kirchenblatt.

THE COURT: And he went their nearly every day, is that right?

THE WITNESS: That's right.

Q From January through April?

A Approximately that period, yes.

Q Did you receive telephone reports from him while he was there?

A No. I don't believe I had any contact with him.

Q To whom would he normally report as a matter of practice at the Exchange?

A To either the Chief Examiner or one of his lieutenants, some principal examiner.

Q Mr. Deignan, Exhibit 56 was a letter by Mr. Hepburn to the Exchange to the attention of Mr. Spies which you said you didn't recall having seen at the time. It is dated November 20, 1969, and in the letter Mr. Hepburn requested, on behalf of Blair, an extension of the time in which to file the answers to the regular financial questionnaire as of September 26th.

Mr. Fried pointed out that on the second page Mr. Hepburn said:

"Our capital meets the requirements of Rule 325 after applying a full charge for the suspense account No. 1 above exposure. We have taken no charge for the short values or credit for the long values in unlocated

positions."

Mr. Fried questioned you about whether the Stock Exchange's rule required or whether the Stock Exchange's practice required a charge to be taken for the short values.

Do you recall that?

A Yes.

Q You testified that it did not require a charge.

A Correct.

Q Can you tell me what is meant by taking or not taking a credit for the long values in unlocated positions?

A Well, in essence it means that they are not considering those to be firm securities and therefore good for capital purposes, because they don't know whom they belong to.

Q Are long unlocated positions securities which you have but you don't know to whom they belong?

A Correct.

Q So that Mr. Hepburn was saying he was neither charging those securities which his records said he should have, but he couldn't locate at that moment nor was he taking a credit for those securities which he did have but couldn't attach to any particular owner?

A Correct.

Q Was that failure to take a credit for the long values also consistent with the Exchange rule or practice at that time?

A Yes.

Q Of the hundred or so firms that were in your care in the alphabetical group A to C, can you tell me how many in 1970 or late 1969 were filing special operations questionnaires

monthly?

A I can't offhand. All I can say is, Blair was not the only one.

MR. BROOKS: Your Honor, Mr. Fried read from Exhibit 59-A, which is a memorandum by Mr. Deignan's assistant Dennis Dirks, dated March 6, 1970, concerning a meeting that afternoon which Mr. Deignan and Mr. Kasparek and Mr. Dirks had with Mr. Hepburn, Mr. Rush and Mr. Morpurgo of Blair & Co. Mr. Fried did not read the bottom two paragraphs on page 1, which I would like to read at this time.

THE COURT: All right.

MR. TURETSKY: What exhibit is that?

MR. BROOKS: Exhibit 59-A.

(Mr. Brooks read to the jury from Plaintiffs' Exhibit 59-A in evidence.)

Q Mr. Deignan, do you recall a discussion with Mr. Fried and your review of a letter dated March 24th and March 25th from Mr. Richardson to you concerning the Amicon stock of Mr. Foley. I show you Exhibits 62-A and 63. Do you recall that attached to each of those is a form for a major bank to execute?

A Yes.

Q Do you recall what these forms for a major bank to execute were designed to accomplish in respect to Mr. Foley's

investment or possible investment in Blair?

A Well, if Amicon stock was an over-the-counter security with an inactive market, there would be a pretty high haircut on it, perhaps a hundred per cent, and it would therefore be no good for capital purposes. If the stock were pledged with a major bank and a money loan could be made against it, and that money brought into the firm in the form of capital, you would have increased the capital value of the firm.

Q Would it be fair to say that this was a method of fixing a value on the Amicon stock so that it could be part of Dr. Foley's contribution to Blair, to be considered part of Blair's capital for net capital purposes?

A Yes.

Q I show you Mr. Richardson's letter of March 24, 1970 and point out that he said there that the most recent sale of Amicon stock was at $35 per share and that Mr. Foley has 27,875 shares.

Why wasn't the fact of that most recent sale sufficient to value the Amicon stock?

A Well, probably because that was the only sale within a reasonable period of time.

MR. FRIED: I move to strike that out, your Honor. It is pure guesswork when he says "probably".

THE COURT: Do you know why it wasn't sufficient?

THE WITNESS: No; I don't.

THE COURT: All right. Strike it out.

MR. BROOKS: Your Honor, may I note for the record that $35 a share times the number of shares that Mr. Richardson represented Dr. Foley had to pledge comes out to approximately $945,000, if that value were applied?

THE COURT: That's right.

Mr. Brooks, I am not trying to press you, but if you and Mr. Fried think you can finish with Mr. Deignan this evening, I will stay later. If it is a protracted proposition, I would like to think about it.

MR. BROOKS: I have probably a few more hours on cross-examination, your Honor.

THE COURT: All right. We will adjourn at this time until Monday at ten o'clock, promptly.

(Adjourned to June 7, 1976, at 10:00 a.m.)

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* * *

along, I have packets of the exhibits that I intend to offer through Mr. Deignan. I have a package for the Court so that the Court will be able to rule on any contested offerings, and I have a set that are marked for identification, which I would like leave to put before Mr. Deignan so that he may simply pick them up as we come to them.

J O H N J. D E I G N A N resumed.

CROSS-EXAMINATION (continued)

BY MR. BROOKS:

Q Mr.Deignan, before we deal with these new exhibits, I believe you testified in response to Mr. Fried's question on Thursday that there were certain weekly reports that at some time Blair was submitting to the Stock Exchange

Do you recall testimony about weekly reports?

A Yes.

Q Can you be more specific and tell us exactly what kind of reports were submitted -- weekly reports?

A Well, the only weekly reports that I recall had to do with their cycle count of securities.

THE COURT: What was that?

THE WITNESS: Cycle count of security differences

THE COURT: Can you tell us what that means?

THE WITNESS: It means counting of securities in their possession, relating the count to the various

underlying record, but doing it on an alphabetical basis, A first, then B, then C.

Q What form did these reports take, sir?

MR. FRIED: Your Honor, I object to this unless the forms are produced.

(continued on next page.)

1A

THE COURT: I thought the purpose of this question was to find out what the documents were so they could be located.

Overruled.

A To the best of my recollection, they were in letter form.

Q Letters from Blair to the Stock Exchange?

A Correct.

Q Let me show you Exhibits 45 and 46 that have been admitted into evidence.

46 is a retyped version, I believe, of a letter, an actual letter that was illegible, and I ask you if these two letters are referring to the cycle count, which you said generated weekly reports.

A Yes. This relates to that situation.

Q In 45, I believe it is, Mr. Hepburn's letter to you --

A Yes.

Q -- requests your permission to discontinue a research on a count that had been made as of March 15, 1969, and to commence a letter-by-letter count in lieu of the research that had been done on the March 15th count, is that correct?

A That's correct.

Q Is that the cycle count that you are referring to?

A Yes.

Q And is Exhibit 46 your indication to Mr. Hepburn that the way he proposes to proceed is agreeable?

A That's correct.

Q So that sometime shortly after you wrote Exhibit 46 we would expect these weekly reports to begin?

A Yes.

Q Is that correct?

A Yes.

Q When would we expect the weekly reports to end, sir? Would it be at the commencement of the audit on September 26, 1969?

A I have no clear recollection of that.

Q Do you have a clear recollection of for how long the weekly reports on the cycle count would have continu

A Until the account had been completed and the results achieved.

Q Do you have a recollection of any point at which the weekly reports ended?

A No, I don't.

THE COURT: What was the date of Plaintiffs' Exhibit 46, Mr. Deignan?

THE WITNESS: July 29, 1969.

Q When the Exchange received the Arthur Young reports in connection with the audit of Blair & Company as of September 26, 1969, some of which reports you have been shown by Mr. Fried, the securities which are the subject of the cycle count would have been counted again and they would be shown in that report, would they not?

MR. FRIED: Your Honor, I submit that counsel here is testifying rather than asking the witness about it.

THE COURT: Well, the question is leading. Of course it is cross examination.

Can you ask him whether that is so rather than telling him it is so?

MR. BROOKS: I would be pleased to, your Honor.

Q Would the securities which are the subject of the cycle count be reflected in the Arthur Young reports as of September 26, 1969?

A Yes, they would.

Q Would you focus again on Exhibit 45 and Exhibit 46, Mr. Deignan.

What were the considerations which led you or your superiors, if you discussed Mr. Hepburn's request with your superiors, to agree to his proposal that you

discontinue or that Blair discontinue its research on the securities count as of March 15, 1969, and attack the differences problem through the device of the cycle count, letter by letter?

A Well, according to Exhibit 45, the count that the firm was then making was as of March 15, 1969, and by July, when this letter was written to the Exchange, of course, many transactions had took place, so it would really be pointless to give much credence to something as of March 15th. It would be more effective to get a count after that which reflected subsequent business.

Q Would the proposal of a cycle count, letter by letter, obtain that up to date information?

A Eventually, yes.

Q Could you tell the jury exactly how that cycle count, letter by letter, would work, and exactly what is being counted in such a count?

A Well, the letter by letter relates to the names of the securities. For example, in the A category would be American Tel & Tel, Anaconda Copper -- anything in the A segment.

A physical count would be made of all the securities in the firm's possession in their segregated boxes, in their active boxes, and those counts would be

checked back against what the firm's records showed to be in their possession, and any differences would in the ordinary course be researched and resolved, if possible.

Q Mr. Deignan, on the same topic of resolving security differences, in Exhibit 42 in evidence, which is Mr. Sokolowski's memorandum to Mr. McChesney -- do you recall Mr. Sokolowski was an examiner and Mr. McChesney was the chief examiner -- dated January 9, 1969, Mr. Sokolowski says, in the last paragraph on page 1, that Mr. Garrish said at that time differences were being researched and that Mr. Garrish was of the opinion that they would be cleared up.

Then there is a reference to a review of the stock record, giving particular emphasis to"illogical street-side position."

Those are the bottom words on page 1, there, sir.

Can you tell me, what is meant by illogical street-side positions?

A Well, at this point in time it is -- it's a little bit hazy in my mind. Perhaps I can answer it this way.

Every security in the firm's possession or under their control has a short side and a long side.

At this point I can't remember which side is which, but let's say that the street side should be a short side and instead of being short it shows at long. So therefore that's an illogical position.

Q And how would the discovery of an illogical street side position aid the task of researching and resolving the differences, as Mr. Garrish and Mr. Sokolowski seemed to think it would?

A Well, if it were an illogical position, then the research would take the direction of finding out why that illogical position was there.

Q It would be -- am I right that it would be a fruitful target to direct the research at in the first instance?

A It's prima facie evidence that something has gone wrong in the recordkeeping process.

Q Let me recover the exhibits I have given you.

Mr. Deignan, during the examination of Mr. Ramsey, Mr. Fried introduced Exhibit 32, which is a letter dated July 3, 1969 from Mr. Bishop to Mr. Ramsey, telling Mr. Ramsey that the Exchange wasn't going to pursue the matter of an apparently capital violation as of May 31, 1968.

I believe you have testified that you did not

participate in the consideration of that problem; is that correct?

A That's correct.

Q But you did testify for Mr. Fried that you could recognize Mr. Spies' initials or signature and that you could identify a document coming from the Stock Exchange's file by, in addition to a signature or initials on it, the holes in the copy that matched your recollection of the holes in the Exchange's files.

I would like you to take a look at Exhibit BB for identification, which is the first one you have there, tell me whether you can identify the initials at the bottom and the form of memorandum and the hole at the top as a Stock Exchange document?

A Yes. The memorandum bears the initials RES for Robert E. Spies.

THE COURT: Do you recognize them as his initials?

THE WITNESS: Yes, I do.

A (Continuing) And, as you indicated, the perforations at the top of the page or the imprint of them, would indicate it came from an Exchange file.

MR. BROOKS: I offer Exhibit BB in evidence, your Honor.

MR. FRIED: No objection, your Honor.

THE COURT: Received.

(Plaintiffs' Exhibit BB for identification was received in evidence)

MR. BROOKS: I would like to read it to the jury, your Honor.

It is a memorandum dated June 17, 1969 . I will note again that the letter from Mr. Bishop to Mr. Ramsey, saying that the Exchange wouldn't pursue that May 31, 1968 apparent capital violation dated July 3rd.

It is entitled Blair & Company, Inc.

"At the executive staff meeting held on June 5, 1969, Mr. Lee Arning" --

Q Who was he at that time?

A He was the vice-president in charge of operations.

MR. BROOKS: "Mr. Lee Arning questioned the staff memorandum of April 16, 1969 concerning the possible violation of the Exchange's net capital requirements Rule 325 by Blair & Co., Inc. on May 31, 1968.

"In view of the apparent misinterpretation of Rule 325.15(8) concerning the treatment of 'dividend receivables' by both the corporation and the auditor, Mr. Arning felt the charge should not be brought to the Advisory

Committee at this time."

Q Who was the corporation, Mr. Deignan?

A Blair & Co.

Q Who was the auditor?

A I don't remember. Young, I think.

Q That would be Arthur Young?

A Arthur Young, yes.

Q Mr. Deignan, would you take a look at Exhibit CC for identificati and tell me if you prepared that.

A Yes, I did.

Q Does it bear your initials?

A It does.

MR. BROOKS: I offer it in evidence, your Honor.

MR. TURETSKY: It's already been marked.

MR. FRIED: It's been marked Plaintiffs' Exhibit 30.

MR. BROOKS: I don't believe 30 is in evidence.

MR. FRIED: It's the same document, isn't it?

MR. BROOKS: I believe it has been marked as Plaintiffs' Exhibit 30 for identification but hasn't been admitted into evidence and I offer it now.

MR. FRIED: No objection.

(Plaintiffs' Exhibit CC for identification was received in evidence)

MR. BROOKS: May I read it.

It's a memorandum dated July 9, 1969, entitled Blair & Co., Inc.

"Today in talking with Mr. James B. Ramsey, Jr. on another matter, I asked him if there had been any change in the plan to integrate each of the Blair-Schwabacher offices into the Midwest System one at a time. (We had heard that a wholesale conversion of all offices was to be done at the same time.) Mr. Ramsey assured me that there had been no change in the original plan and that each office would be integrated separately in a manner to insure no loss of control."

Q Mr. Deignan, do you recall whether the Exchange had made any suggestion to Blair & Comkpany on the point of how to convert their firm or the offices of the firm to the Midwest Stock Exchange System?

A Well, I recall that I had conversations with somebody at the firm, probably not Mr. Ramsey initially. That was when I initially heard about the proposed conversion, and it is my recollection in that conversation I asked if it were going to be done on an individual basis, office by office, and I was assured that, yes, it was

going to be done on an office by office basis.

Q But when did you first learn that it had not been done on an office by office basis but had been done all at once?

A I don't recall specifically, but it was obviously after July 9, 1969, the date of this exhibit.

Q Was it after the fact, after the fact of its having been done all at once on November 17, 1969, that you learned that that was the method Blair had adopted?

MR. FRIED: I submit this is improper. The witness has stated he didn't remember and then he suggested to him another date.

THE COURT: I think he is entitled to refresh his recollection.

A It was after the fact. The wholesale conversion had gone into operation before I learned about it.

Q Before you learned that that was the method they were going to use to convert?

A Yes.

Q Mr. Deignan, the next two exhibits that you have before you are DD and EE for identification.

Will you review those and tell me whether you prepared them?

A Yes, I did.

Q I take it they were memoranda to the file at the Stock Exchange in relation to Blair & Company?

A Well, EE was, but DD -- DD was used, I am sure, to come to a determination as to whether or not the restrictions should have been removed.

Q Do I understand you correctly that DD would have been addressed for someone other than the file to read, addressed to some person in the Exchange to read?

A Yes.

Q Do you recall whom it would have been routed to?

A Well, the upper left-hand corner bears the indication B, so I believe that's Mr. Bishop.

MR. BROOKS: I offer DD and EE, your Honor, together, because I believe they are both related, both dated September 4, 1969.

MR. FRIED: No objection.

(Defendants' Exhibits DD and EE for identification were received in evidence)

MR. BROOKS: I would like to read the last paragraph of DD.

I will summarize the above by saying that it speaks of restrictions that had been imposed in the past

on Schwabacher & Co. The memorandum is dated September 4, 1969. The last paragraphs said:

"It would appear from the foregoing that the operations problems of the Schwabacher Division have been substantially resolved and there appears to be no reason why our restrictions shouldn't be modified significantly or in some cases removed completely. However, we must also consider the operation status of Blair & Co., Inc. Relevant information is in a separate memorandum."

Mr. Deignan, is that separate memorandum EE?

A No, I don't believe it is.

MR. BROOKS: I guess I don't have the separate memorandum.

Q If you will turn your attention to Exhibit FF, Mr. Deignan, and tell me whether you prepared that.

A Yes, I did.

Q Are the initials typed in the lower left, JJD, your initials?

A They are.

MR. BROOKS: I offer FF in evidence.

MR. FRIED: No objection, your Honor.

THE COURT: Received.

(Defendnats' Exhibit FF for identification was received in evidence)

MR. BROOKS: I would like to read the last two paragraphs of the memorandum, your Honor.

THE COURT: All right.

MR. BROOKS: The memorandum is dated October 23, 1969, headed "Schwabacher Division."

The fourth paragraph is entitled 'Capital Condition.'

"As of September 26, 1969, the net capital of Blair & Co., Inc. stood at $5,858,568 against an aggregate indebtedness of $85,011,984 for a ratio of

1468 percent."

Q Using Mr. Fried's approach, Mr. Deignan, that would be 14-1/2 to 1.

MR. FRIED: I object to those constant references to what I do.

THE COURT: Sustained.

Q Would that 1468 percent be the equivalent of 14-1/2 to 1?

A Yes.

MR. BROOKS: Continuing "The firm has had total losses of approximately $2,400,000 for the months of July and August, 1969."

The last paragraph is entitled "Current Status".

The operations of the Schwabacher Division as reflected in answers to Special Questionnaires reflect no serious problems. Blair & Co., Inc. is currently undergoing audit and assuming the results are favorable, the probability is that we will eliminate the restrictions against the Schwabacher Division."

MR. FRIED: May I read the first part of this exhibit, your Honor, which hasn't been read?

THE COURT: Yes.

MR. FRIED: "Problem: Schwabacher & Co.

lost control of its records upon conversion to the Midwest Bookkeeping System and substantial security and money differences resulted."

That's the first paragraph of that exhibit, your Honor.

MR. BROOKS: I would like to read the second and third, your Honor. By then we will have it all.

The second is entitled "Steps Taken by Exchange: In March, 1968, upon becoming aware of the problem, various restrictions were imposed, including a limitation on the number of trades per day, on new registered representatives, branch offices, and others designed to curtail the volume of the firm's business."

"On March 1, 1969, Schwagacher & Co. was taken over by Blair & Co., Inc. and has since then continued to operate as a Division of the latter firm. However, we continued the restrictions against the Schwabacher Division until September 8, 1969, when some modification was made having to do with an increase in registered representatives, an increase in the number of issues in which the firm could make markets, and a relaxation on advertising."

Q Mr. Deignan, in the paragraph I have just read it says restrictions between the Schwabacher Division

were continued until September 8, 1969, when there was some modification.

If you would go back and take a look at DD and EE, I believe you said DD was a memorandum to other personnel at the Exchange to enable them to reach a decision.

Would DD be the memo -- I call your attention to the fact that DD is dated September 4th. Would DD have been the memorandum on which the decision of September 8 8, 1969 was made to modify restrictions on Schwabacher?

A Yes, I would say so.

Q Mr. Deignan, in the course of business of your work as the supervising coordinator for Blair & Co. and other firms in the A to C alphabetical group, in let's say late '69 and 1970, was it your practice to generate and supply information for the Securities and Exchange Commission in respect to certain of your member firms?

MR. FRIED: May I have that question read?

THE COURT: All right.

(Record read)

MR. FRIED: I object to this, your Honor.

THE COURT: Overruled.

A I would say not per se, but much of the information we did generate found its way to the SEC in

one way or another.

MR. FRIED: Your Honor, I move to strike out the answer as not responsive.

THE COURT: Well, I don't see how it hurts anybody. It's a historical fact.

Q Mr. Deignan, would you take a look at Exhibit GG for identification and tell me whether that is a memorandum prepared by you?

A Yes, it is.

MR. BROOKS: I will offer it in evidence, your HOnor.

MR. FRIED: No objection, your Honor.

THE COURT: Received.

(Defendants' Exhibit GG for identification was received in evidence)

MR. BROOKS: May I read it, your Honor.

It is a memorandum dated December 4, 1969 from Fred Stock, Jr. to Mr. Deignan.

"Here is the information you wanted on my firms for the meeting with the SEC people next week.

"As of September 30, 1969, Abbott, Proctor & Paine had a capital ratio of 1912 percent. The current ratio as of December 2, 1969 is 1630 percent. However, the firm is continuing to liquidate proprietary positions

and we can anticipate that the ratio will continue to decline.

"Baerwald & DeBoer had a capital ratio of 1736 percent as of September 30, 1969. Our most recent figure since then is 1261 percent as of November 7, 1969.

"As to firms on restriction we have:

"1. Amott, Baker & Co., Inc. - remains on restriction because of the condition of its records.

"2. Schwabacher Division of Blair & Co., Inc. - remains on restriction only pending receipt of Blair & Co. audited financial questionnaire due on November 15, 1969, but extended to December 8, 1969."

Q Mr. Deignan, how often did you prepare such a memorandum to provide information as to be transmitted to the SEC about your firm?

A On no set schedule. Just as requested by Mr. Stock or Mr. Bishop.

THE COURT: I am not sure if Mr. Brooks' question implies that this was prepared for transmission to the SEC man. Mr. Stock wasn't an SEC man?

THE WITNESS: No, he was not; he was my immediate superior.

THE COURT: Was it meant to go to the SEC or to him?

THE WITNESS: Well, he apparently from this memo was describing a meeting with some SEC people and he was asking me for the information so he could discuss it.

THE COURT: I see.

He asked you for the information?

THE WITNESS: That's right.

Q I note that all of these firms are in the A, B or C alphabetical group.

A That's correct.

Q That means that you were in your jurisdiction as supervising coordinator?

A Yes. That's why I used the term "my firms".

Q Do you recall with what frequency Mr. Stock and Mr. Bishop had with the SEC in late 1969 and 1970?

A No. I don't recall the frequency.

Q Mr. Deignan, Mr. Fried showed you Exhibit 19-B, which is Blair & Company's special operations questionnaire as of 12/31/69. I believe it's referred to in the transcript as Exhibit 19. I believe it should be 19-B.

I show that to you.

I would then like to read from the trial transcript of your testimony at page 1082 --

MR. FRIED: Your Honor, I submit this is

improper.

THE COURT: I am confused as to why you are going to read him his own testimony.

MR. BROOKS: Well, Mr. Fried asked him a question, and the answer was subsequently given which I think is either incorrect or at least misleading.

I want to correct the record in respect to the subject matter.

THE COURT: Well, why don't you tell Mr. Fried what questions were asked?

Q Mr. Fried asked you questions about the Special Operations Questionnaire and whether the following ones revealed any capital ratio which was in compliance, and I think the subsequent testimony on 1083 and 1084 at least suggests that you were unable to find such a ratio.

I call your attention to Question 1-H, second column on the first page of Exhibit 19-B and ask you what the ratio is there?

A 1569 percent.

Q And that would be the same as 15-1/2 to 1, would it not?

A Correct.

Q That is in compliance with Rule 325, isn't

it?

A Yes.

Q For as of what date is that ratio shown?

A As of November 30, 1969.

Q What is the ratio of December 31, 1969?

A 2673 percent.

Q That is not in compliance, is it, sir?

A No, it is not.

Q On what date is that?

A December 31, 1969.

THE COURT: And the ratio?

THE WITNESS: 2673 percent.

Q Mr. Deignan, that is as of December 31, 1969. Would you tell me the date of the Special Operations Questionnaire?

THE COURT: You mean the document --

MR. BROOKS: The preparation date.

THE WITNESS: February 10, 1970.

Q And who are the preparers of that -- of the answers to that questionnaire?

A Well, I don't know who the preparers were, but --

Q Is it safe to say that it was somebody at Blair & Company?

A Oh, yes.

Q Who are the signatories on the answer to the questionnaire?

A James B. Ramsey, Jr. and Raymond Holvenstat, signed for by James J. Rush.

Q Can you tell me when you received Exhibit 19-B at the Stock Exchange?

A No, I can't from this document.

Q Would it have been after February 10th?

MR. FRIED: I object to this, your Honor. It is purely speculative. He says he doesn't know.

THE COURT: Overruled. Let him answer, if he can.

A I would say it was received on February 10, 1970 or a few days thereafter.

Q Mr. Deignan, do you recall we have reviewed a memorandum by you dated January 16, 1970, which reflected your report at the coordinators meeting about the analysis of the regular answers -- the answers to Regular Financial Questionnaires. I believe it shows a ratio of approximately 1600 percent and at the bottom you decided to send an examiner to Blair, because you heard they were having a troublesome conversion.

MR. FRIED: I submit this is not asking a

question but making a statement.

THE COURT: It is a reference to an exhibit.

MR. BROOKS: I am just trying to lay a foundation, your Honor.

Q Was the first report received by you at the Stock Exchange that Blair was out of compliance with Rule 325, Exhibit 19-B, that you have before you?

THE COURT: To put it differently, was that the first report that he had that showed Blair was out of compliance?

MR. BROOKS: Yes, in the 69-70 percent.

MR. FRIED: What are you showing him?

MR. BROOKS: 19-B.

THE COURT: Do you understand the question, Mr. Deignan?

THE WITNESS: Yes, I understand the question.

Q Would it help if I showed you 19-M. That was the document which Mr. Fried has designated as an exhibit number for me.

I should have showed it to you first.

It appears from 19-M that at that time, January 16th, you were applying a 1600 percent ratio to Blair.

Now, you got shortly after February 10th Exhibit 19-B, which shows that as of December 31st they

were out of ratio.

My question is, is Exhibit 19-B the first report that you have that Blair is out of capital compliance?

A To the best of my recollection, yes.

Q Mr. Deignan, Mr. Fried show you Exhibits 37, 38 and 40, which are Blair's answers to Special Operations Questionnaires as of January 30, 1970, February 27, 1970 and March 26, 1970, and after reviewing them, I believe you agreed that they did not show that Blair was in capital compliance on any of the three, to which I don't agree, but I would like you to tell me what the dates are on the preparation of each of those, and then tell me when to the best of your recollection you would have received each of those.

A 37 was as of January 30, 1970, and the preparation date is indicated as of April 20, 1970.

Q Do you have a recollection of when you received it?

A I have no specific recollection, no.

Q But can we infer that it was after the preparation date?

A I would say so, yes.

39 is as of February 27th, 1970 and bears the preparation date of April 20, 1970.

I see the last page has my receipt stamp, indicating it was received on April 2, 1970.

Q April what?

A Well, all I can see is 2, there's another number there, but it's not decipherable.

Q Would you read that to be April 20th, followed by a second digit, either the 20th through the 29th?

A Well, it's followed by a digit, but all that I can see is one dot on top and one dot on the bottom. It looks like it might be a 1: 21.

Q But some time following April 20 as opposed to April 2?

A Right. 40 is as of March 26, 1970, with a preparation date of April 22, 1970, and a time stamp of April 23, 1970.

THE COURT: The time stamp meaning what?

THE WITNESS: Well, when material of this kind or letters or any writings were directed to me, my secretary put a stamp on them.

THE COURT: In other words, that is your time received stamp?

THE WITNESS: Yes.

THE COURT: Well, I am a little confused, although I suppose it is always possible, because it appears that you received it later than the later reports or earlier than the earlier report s. The March reports -- the February report you receved in May.

MR. BROOKS: I don't believe he testified to that.

THE COURT: I believe he testified that the February 27th report was received in May.

THE WITNESS: 38, which as of February 27, 1970, was prepared on April 20, 1970, and received by me in April.

THE COURT: What was the discussion that we had about the latter part of May?

MR. BROOKS: I don't recall a discussion about a May date, your Honor.

THE COURT: Was it the latter part of April?

MR. BROOKS: I believe.

THE COURT: The one where you talked about whether there was another digit after the two?

MR. BROOKS: Yes. There was an April date which could be read --

THE COURT: All of the reports were received within a few days of each other, is that right, even though they refer to different documents?

MR. BROOKS: That is correct. Received shortly after April 20, which is as close as we can come to telling.

Q The next exhibit is HH for identification, Mr. Deignan, which is a memorandum dated February 28, 1970, which appears to bear your initials. Are those initials yours?

A Yes.

Q Did you prepare HH?

A Yes, I did.

Q Is it a memorandum to the file?

A Yes.

MR. BROOKS: I offer it in evidence, your Honor.

MR. FRIED: No objection.

xxx (Defendants' Exhibit HH was received in evidence.)

Q HH recites, Mr.Deignan, as follows: "This afternoon I spoke with James Rush of Blair & Co., Inc. to arrange for Fred J. Stock and me to sit in on a weekly meeting that the firm has with the Midwest System--" do you recall such a meeting taking place?

A No, I don't. I don't think -- I have no recollection of attending any such meeting.

Q Do you believe that it didn't take place or do you simply have no recollection one way or the other?

A I have no recollection.

Q The second paragraph speaks of an amount that Blair & Co. is to receive from the Schwabacher partners in connection with a settlement of the obligations of the Schwabacher partners as a result of the merger into Blair & Co.

A Yes.

Q Do you recall whether that sum was received, as Mr. Rush indicated would be?

A No, I don't recall.

Q The next to the last paragraph reads: "In

the near future certain transactions will be consummated with capital management which will bring in $1,200,000."

Do you recall whether that transaction was completed?

A No, I do not.

Q Mr. Deignan, Exhibit 62 in evidence is a letter dated March 23, 1970, to yourself from Mr. Richardson.

Do you recall viewing that when Mr. Fried was examining you?

A Yes.

Q May I borrow it for a moment.

The letter transmits on March 23, 1970, drafts of the collateral agreement, the Blair option agreement and the CMC option agreement, which Blair contemplates using in connection with Mr. Foley's loan.

I believe you testified that when you received these documents you forwarded them to the documents division and placed them on the top of the pile so that they would look at them right away and not in the normal course.

Can you tell me what the purpose of the review of the documents division of those documents was?

A Well, the purpose I would say was for them to make a determination as to whether these documents were acceptable to the Exchange and whether the money engendered

thereby would be good capital for the firm.

Q Would it be fair to say, in other words, that the Exchange wanted to be sure that the capital was legall committed to Blair & Co., and wasn't illusory or subject to being withdrawn, other than as stated in the documents?

A That is correct.

Q Mr. Deignan, I have here a copy of Exhibit 19J in evidence. This is a letter dated April 1, 1970, by Mr. Bishop to Mr. Hepburn, which you discussed at some length with Mr. Fried.

Do you recall that it tells Blair that it had better get into capital compliance by April 3?

At pages 1122 and 1123 of the trial transcript, Mr. Fried, after showing you that document read into the record a passage from your deposition --

MR. FRIED: Your Honor, I submit this is improper examination.

THE COURT: Overruled.

Q Read into the record a passage from your deposition in which you testified that you could not explain why the liquidation of the collateral behind the secured demand notes of members and allied members didn't take place until after the Foley money came in.

Mr. Fried also read the April 1 letter, Exhibit 19J into the record, with the exception of the last two and a half paragraphs of that letter.

MR. BROOKS: Your Honor, I would like to read --

THE COURT: Do you have a question?

MR. BROOKS: Well --

THE COURT: Will it be coming?

MR. BROOKS: Yes.

THE COURT: I don't mind a reasonable statement as background to a question.

MR. BROOKS: It is. I would now like to read the April 1 letter and ask Mr.Deignan the question that Mr.Fried read into the record from his deposition testimony, which he said he was unable to answer at the time of his deposition.

MR. FRIED: I submit, your Honor, this is improper. There ought to be proper questions.

THE COURT: Well, let's move along.

Go ahead, Mr. Brooks. I would like to see if we can't do it in a somewhat less laborious manner.

MR. TURETSKY: On what page is the question?

MR. BROOKS: 1122 and 1123 is the reading with respect to 19J, and 1130 is the question.

This is the April 1 letter.

"Dear Mr. Hepburn:

"This is a followup on the telephone conversation you and your associates had today with JohnDeignan of our staff.

"It is my understanding that a capital computation as of February 28, 1970 indicates that Blair & Co., Inc. had a capital deficiency of $3,000,000 reflecting an improvement of approximately $1,400,000 from the deficiency of $4,400,000 as of January 31, 1970.

"We know that for some time you have been making efforts to improve the capital position of your firm but you will realize, I am sure, that we cannot permit your firm to continue in violation of Rule 325. Accordingly, we must insist that immediate steps be taken to insure that Blair & Co., Inc. is in compliance with Rule 325 by the close of business on Friday, April 3, 1970. It would appear to us that the most logical way to accomplish this is to liquidate the collateral behind the Secured Demand Notes of members and allied members of your firm.

"We understand that as an alternative you are endeavoring to expedite completion of the Foley borrowing to the extent of $2 million of capital value. We must point out that such borrowing can only be

considered as good capital by Friday if proper documentation is in our hands on or before that day. I understand further that an agreement in principle has been reached with former partners of Schwabacher & Co. whereby collateral behind their Secured Demand Notes is to be liquidated resulting in an increase in net capital of $1,200,000."

That is where Mr. Fried stopped.

"Although the final agreements have not been signed, we understand that efforts will be made to accomplish the liquidation prior to the signing of the agreement and by the close of business on this coming Friday.

"We have no objection to your proceeding as indicated in the previous paragraph with the distinct understanding however that if your plans have not materialized by Friday, we shall expect the securities behind Secured Demand Notes of members and allied members of your firm to be liquidated on that day in sufficient quantity to bring your firm's capital position into conformance with Rule 325.

"Should you have any questions concerning the foregoing, please let me know promptly."

Now the question that Mr. Fried read from your deposition --

THE COURT: Mr. Brooks, just ask your question. We have been waiting for five minutes to hear the question.

MR. BROOKS: I apologize for the delay, your Honor.

Q Mr.Deignan, can you answer why Blair brought in the Foley money before it liquidated the secured demand note collateral in the accounts of members and allied members after reading the complete, or after my reading of the complete April 1 letter?

MR. FRIED: I object to this, your Honor. He is asking -- how does he know why Blair did something?

THE COURT: The first question is, do you know why Blair did what it did? Do you want to repeat the question, please, Mr. Reporter. The answer that you gave, Mr.Deignan, should be on the basis of personal knowledge.

(Question read.)

A No, I can't.

Q In the third paragraph of April 1 letter I believe you told us that you were the preparer, at least, of the first draft of this April 1 letter, is that not correct?

A That is correct.

Q The last sentence of the third paragraph says, "It would appear to us," meaning the Stock Exchange --that

the most logical way to accomplish this is to liquidate the collateral behind secured demand notes of members and allied members of your firm."

Why, Mr.Deignan, was that the most logical way for Blair to get into capital compliance as of that date of April 1?

A Because it would convert securities into cash, on which there would be no capital haircut.

Q And by elimination of the haircut, would they thereby improve their capital by roughly 30 per cent?

A Yes.

THE COURT: Does the jury understand why that is so? If not I will ask Mr.Deignan to explain .

"No," means you do understand or you don't?

THE JURORS: No.

THE COURT: Mr. Deignan, will you explain why that would increase the value of the firm's capital by 30 per cent of the securities liquidated?

THE WITNESS: Well, just to say a figure, if you had $100,000 worth of securities up as capital, you would be -- under Exchange rules the capital value would only be 70 per cent.

THE COURT: You would only be credited for 70 per cent, right?

THE COURT: And the reason is, as I understand it, that securities vary in value and you can't assume that they would be worth 100 per cent?

THE WITNESS: That is correct.

THE COURT: On the other hand, when you come to sell them, convert them into cash, obviously the cash is going to be worth cash?

THE WITNESS: Right. If they are sold for $100,000, then you have got $100,000 good capital as opposed to 70 per cent.

THE COURT: By that sale alone you would increase it more than 30 per cent, because it would be 30 vis-a-vis 70?

THE WITNESS: Yes.

THE COURT: In any event, you would increase capital in that example from 70 to 100?

THE WITNESS: Correct.

THE COURT: Do you understand that?

Q Now, Mr.Deignan, before a liquidation, do I understand it correctly that the collateral in a member or allied members secured demand note account would be the securities, is that correct?

A That is right.

Q And if those securities were liquidated -- let

me back up -- where would those securities be, actually, under normal practice?

THE COURT: Physically?

MR. BROOKS: Yes.

THE COURT: They could be in the boxes. They could be in a bank loan.

Q Pledged at a bank as collateral?

A Yes.

Q After a liquidation -- you understand that there would then be cash available for Blair, just as the proceeds of the bank loan would have been available for Blair?

A Right.

Q Would the secured demand noteholder have a credit against his account of the cash now rather than the securities, as before?

A Yes, I would say so.

Q Mr.Deignan, is it a proper reading of Exhibit 19 that the choice was left to Blair whether to liquidate the collateral first or to attempt the Foley borrowing in combination with the Schwabacher settlement to obtain compliance?

MR. FRIED: I object to it, your Honor. There is no such thing as a proper reading. The language speaks for itself.

THE COURT: Overruled.

Perhaps it would be better to ask is did you intend that Blair convey its option?

MR. FRIED: May I have the question read, your Honor.

(Question read.)

THE COURT: My question was, did he intend that Blair should have its option in drafting that letter.

MR. FRIED: I am asking for Mr.Brooks' question to be read.

MR. BROOKS: I will waive my question in favor of your Honor's question.

THE WITNESS: I don't recall what I had in mind when I prepared this letter, but the letter does indicate that if their other plans haven't materialized they should -

MR. FRIED: Your Honor, I move to strike this out.

THE COURT: Sustained.

The letter does speak for itself.

Q Mr. Deignan, I believe Mr. Fried showed you and introduced into evidence Exhib it 66, which is an April 7th letter to yourself from Mr. Richardson enclosing about 10 or 11 documents which had been signed at the Foley closing on April 3.

Number 8 in the list of documents enclosed is an April 3 letter by Mr. Foley to the Stock Exchange, which we have sometimes called the knowledgeability letter. That is in evidence as Exhibit 13, and I show it to you.

Was the knowledgeability letter, Exhibit 13, a document that was required by the Stock Exchange before it would approve the Foley transaction?

A Yes, it was.

THE COURT: I think this would be a good time for us to take the morning recess.

(Recess.)

(continued on next page.)

2B

BY MR. BROOKS:

Q Mr.Deignan, at page 1130 of the trial transcript you testified by way of having your deposition read into the trial record that you could not say of your own knowledge why the Exchange permitted the Foley money to come in to Blair.

Do you recall Mr. Fried reading that portion of your deposition at the trial?

A Yes.

Q Would you tell me what rules the Exchange has governing the admission of a new subordinated lender at a firm such as Blair at or about the time of April 1970?

MR. FRIED: Your Honor, I submit that the rules are there and the witness' opinion of the rules are not governing.

THE COURT: He was not being asked his opinion. He is being asked to tell us orally --

MR. FRIED: The rule itself ought to be submitted

THE COURT: I can imagine the rule may need some elucidation. If that is your objection, it is overruled.

Would you answer the question, Mr. Deignan?

THE WITNESS: Yes.

A The requirement first is that the proposed

subordinated lender fill out an application giving various information about his background, which is processed by our secretary's office and ultimately taken before the board of governors for action.

Also the documents, the necessary documents, for embodying the borrowing come to the then department of member firms, go to our documents division, where they are processed and approved or amended as requested by the Exchange.

Q If I understandyou correctly, there are two things at issue, the documents which Mr. Richardson sent you a draft of on March 23, and the qualifications of the individual, in this case Mr.Foley and Mrs.Foley and Mrs. Salisbury, is that correct?

A Correct.

Q Is Exhibit 14 the application form for Mr. Foley that you referred to as being required of the new lender (handing)?

A Yes, it is.

Q What is the purpose in requiring the submission of a form such as 14?

A To enable the Exchange to reach a decision as to the reputation and integrity of the proposed lender.

Q And we have discussed before the purpose of

the Documents Division's reviewing the documents.

A Yes.

Q You testified that it was to insure the binding nature of the agreement?

A Correct.

Q To make sure the capital is really there.

Are there any other rules governing the acceptability of a new subordinated lender?

A Not that I recall at this time specifically.

Q Mr. Deignan, so far as you knew on April 3, 1970, Mr.Foley wanted to make the subordinated loan to Blair, did he not?

A As far as I knew, yes.

Q So far as you knw on April 3,1970, Blair wanted to have him make this subordinated loan, did it not?

A Yes.

Q Mr. Degnan, Mr.Fried showed you Exhib it 64 in evidence, which is your memorandum dated April 3,1970, memorializing a conversation you had with Joseph Daley at about 4:45 P.M.

Do you recall that?

A Yes.

Q I believe you said that you weren't sure who called who, whether Mr.Daley called you or you called him,

is that right?

A That's right.

Q How can you tell from the exhibit that the conversation was a telephone call rather than an in person conversation?

(Pause.)

A I can't tell from the memorandum.

Q Is it your recollection that it was a telephone call?

A Yes, it is.

Q In the memorandum you recite that Mr.Daley told you that he was required to submit to the SEC in Washington a questionnaire relative to Blair's capital position and that he had been granted until Monday to do it and he would send you a copy.

Do you see that recited?

A Yes.

Q Let me show you, or call your attention to Exhibit II for identification,and askyou if that was the capital computation that Mr.Daley promised to send to you, if that is a letter from Mr.Daley sending to you that capital computation?

A Yes, it is.

Q Would you read the first paragrapl of that letter

and see if you agree with me that the date Monday, February 6, should be April 6, Monday, April 6.

THE COURT: Where it says "On Monday, February 6th"?

MR. BROOKS: Yes. I would suggest that that is an error by Mr.Daley or his secretary. I think the Court can take judicial notice that February 6 is a Friday and April 6 is a Monday.

(Pause.)

Q (continuing) Would I be correct in suggesting that that is an error?

A It looks very much like it, yes.

MR. FRIED: What are you talking about?

MR. BROOKS: I suggested to Mr. Deignan that the date Monday, February 6, in the first paragraph of the letter should properly be Monday, April 6. And he has agreed.

Q I would buttress your agreement, Mr.Deignan, by pointing to the fact that the last column of the attachment shows financial --

MR. FRIED: I object to this. The letter speak for itself and it says "were turned over." There is no obvious ty pographical error and obviously February 6 --

THE COURT: Please let me look at it.

(Pause.)

Well, "were" would still be applicable to April 6 since the letter is dated April 7.

MR. FRIED: But it would also be applicable to February 6,your Honor. This witness is merely drawing a conclusion.

THE COURT: But the witness is entitled to give his reaction to it.

However, Mr. Brooks, if you want to argue it, you can argue that to the jury at the close, but I don't think that will then be strengthened by asking Mr.Deignan any question about it. You could point it out now, if you want.

MR. BROOKS: Let me first offer in evidence Exhibit II for identification.

THE COURT: All right. Any objection to its going in evidence?

MR. FRIED: Yes,your Honor.

I object to all these documents after the April 3rd closing.

THE COURT: Overruled.

xx (Defendants' Exhibit II for identification was received in evidence.)

Q Mr.Deignan, I call your attention to the first

page of the attachment, which is dated February 28, 1970.

Is there any way that you know of that Blair or Mr.Daley could have gotten the information as of February 28, 1970, on February 6, 1970?

THE COURT: Oh, come on, Mr. Brooks.

Q Mr.Deignan, do you recognize the first two pages of the attachment to be a form used by the Securities and Exchange Commission at or about this time?

A Not specifically. I wasn't exposed to this sort of document before.

THE COURT: I note that the first page, anyway, which appears to be succeeded sort of integrally by the second page, has at the top of it "Securities and Exchange Commission short form reporting questionnaire."

I assume that unless evidence is brought before us to the contrary that we have a right to believe that this is a SEC form.

Q Mr.Deignan, you have before you Exhibit JJ for identification, Is that a memorandum bearing your initials and prepared by you for the file?

A Yes, I prepared it.

MR. BROOKS: I offer it in evidence, your Honor.

THE COURT: You have a continuing objection,

Mr. Fried, to submission of post April 3 documents. So you don't need to repeat that.

Is there any other basis on which you will object to JJ?

MR. FRIED: I believe it is in evidence, your Honor.

MR. BROOKS: I don't believe it is in evidence.

MR. FRIED: If it is not in evidence, I have no objection.

THE COURT: All right. Received.

xxx (Defendants' Exhibit JJ for identification was received in evidence.)

Q Rather than reading the document, Mr. Deignan, I will try to characterize it, with your agreement, would it be correct to say that this memorandum shows that Blair reported that as the result of a Foley loan and additional steps it was in compliance with the capital rule with a ratio of 1630 per cent on the date of reporting as of April 9, 1970?

MR. FRIED: I object to that, your Honor. It speaks for itself and the ratio is shown as 1630, which is not in compliance.

THE COURT: I thought 1630 would be in compliance, wouldn't it, Mr.Deignan?

MR. FRIED: No, sir. They were under a 15:1 ratio, your Honor.

THE COURT: Then let me ask you, Mr. Deignan, whether the ratio of 1630 as shown in this memo would or would not have been in compliance for Blair.

THE WITNESS: To the best of my knowledge it was in compliance.

THE COURT: You mean that ratio would have been?

THE WITNESS: Yes.

Q And that would be the same as about 16-1/3 to 1, would it not, Mr. Deignan?

A Correct.

Q And that is after the Foley loan had been taken into account, is it not?

A Yes.

MR. BROOKS: I take it there is no dispute that JJ has gone into evidence, is that right?

THE COURT: JJ is in evidence, that is right.

Q Before you you have KK, Mr. Deignan, which appea to be a memorandum dated April 14, 1970, bearing your initials, being similar to the prior memorandum. Can you identify it?

A Yes. I prepared it.

MR. BROOKS: I offer KK in evidence, your Honor.

MR. FRIED: No objection, your Honor.

THE COURT: Received.

xxx (Defendants' Exhibit KK for identification was received in evidence.)

Q Mr.Deignan, am I correct that this is a memorandum dated April 14, 1970, which shows that as the result of the Foley loan and other steps Blair was reporting to you a ratio of 1519 per cent?

A That's correct.

Q Was thatin compliance, sir?

A To the best of my knowledge, yes.

Q What would the ratio or percentage have to be before Blair went out of compliance?

A Over 2000 per cent.

THE COURT: Or 20:1.

THE WITNESS: 20:1, yes.

THE COURT: Mr. Fried alluded before to a ratio of 13:1. Do you understand what he was referring to?

THE WITNESS: It is just like 1500 per cent, yes.

THE COURT: Yes, I know. But do you understand whether that applied to Blair during this period of time?

THE WITNESS: It was not my understanding that it did, no.

THE COURT: Thank you.

Q Mr. Deignan, at or about April 1, do you recall whether the SEC was monitoring Blair & Co.?

MR. FRIED: I object to that, your Honor.

THE COURT: Overruled.

MR. FRIED: I strongly object to the word "monitoring," because I don't think he is in any position to testify.

THE COURT: Well, you can ask questions about it on redirect. But I don't see that it is such a complicat word.

Anyway, do you recall whether the SEC was doing anything with regard to the affairs of Blair & Co., and if so will you tell us what?

THE WITNESS: Well, all I can recall specifically is that the SEC certainly had an interest in the situation at Blair.

THE COURT: How did it express that interest, Mr. Deignan?

THE WITNESS: Well, at or about this period, if I recall correctly, I had calls from different people at the SEC inquiring about the status of Blair & Co.

Q Mr. Deignan, let me try to refresh your recollection about my question by reading from your deposition

which you gave in this case on March 8, 1972, where you were asked the question, page 135 --

MR. FRIED: Just a moment.

I object to this, your Honor. There is no inconsistent statement being established here and there is no foundation --

THE COURT: Mr. Deignan said all he recalls is -- am I correct that you are implying that you may not recall everything that you went through about the subject?

THE WITNESS: That is right.

Q Question at page 135:

"Q At or about April 1, was the SEC monitoring the condition of the Blair firm?

"A Yes."

Does that refresh your recollection?

A No, I am sorry, it doesn't.

Q At this time do you recall whether the SEC was aware of the possibility that the Foley loan would be made to Blair?

MR. FRIED: I object to that, your Honor.

THE COURT: He may have been present when they were told.

THE WITNESS: I can't recall that, no.

Q Let me try to refresh your recollection by readi

from the same page of your deposition:

"Q Were they aware of the possibility that the Foley loan would be made?" Referring to the SEC, which was the subject of the immediately prior question.

"A I would say yes."

Does that refresh your recollection?

A Not specifically, not relying strictkly on memory, no.

Q Would you stand by your testimony at your deposition on March 8, 1972?

MR. FRIED: Objection, your Honor.

THE COURT: Sustained.

Q Mr.Deignan, was the SEC, to your recollection, aware that the Blair firm had reported a ratio in capital compliance after the Foley loan in April of 1970?

A I don't recall that specifically, no.

Q Let me continue reading from your deposition to see if it refreshes your recollection.

THE COURT: May I suggest that you show him the transcript? I think sometimes that is more helpful than reading it.

MR. BROOKS: Surely.

Q The last question and answer on page 135 (handing).

THE COURT: To get the connection.

(Pause.)

A What is the question, Mr.Brooks?

MR. BROOKS: Perhaps the report had better read the question back. I don't know that I can rephrase it.

(Question read.)

A Well, I don't remember. But the record of my deposition would indicate I had a better recollection then.

MR. FRIED: I move to strike that out, your Honor.

THE COURT: Sustained.

MR. FRIED: "I don't remember," he said.

Q Mr.Deignan, you have before you an April 15, 1970 memorandum that was admitted into evidence as Exhibit W.

I have labeled the Exhibit LL for identification mistakenly. Let's refer to it as Exhibit W.

I ask you if this is a memorandum prepared by you and bearing your initials?

A Yes.

Q It reports on a meeting that you attended at the Securities and Exchange Commission that morning with various personnel from Blair and various personnel

from the staff of the Securities and Exchange Commission.

Do you recall that meeting?

A Yes, I do recall that.

(continued on next page.)

3A

Q Do you have a recollection of what was said at the meeting by the various participants?

THE COURT: Without reading the memorandum?

MR. BROOKS: Yes.

THE COURT: I bet he can answer it.

A No, I have no specific recollection.

Q Would you read the memorandum and see if it refreshes your recollection on what was said?

(Pause)

THE COURT: You can relax for a while, ladies and gentlemen. This is three and a half pages long.

A The memorandum is dated April 15, 1970. It is headed "Blair & Company."

THE COURT: Mr. Brooks is asking you to read it to yourself to see if it refreshes your recollection.

Q And to save time, Mr. Deignan, you can skip the material on page 2 and continue on about the problems of one Mr. Danford.

THE COURT: I am not clear. You want him to read page 1 and page 3, is that it?

MR. BROOKS: In the middle of page 2 the discussion begins with Mr. Danford.

THE COURT: Is that where you want to start?

MR. BROOKS: I want him to skip Mr. Danford.

(Pause)

Q I think we are taking too much time. If you just review the first page, I will confine my questions to that page.

A Okay. I finished.

Q Do you know Mr. William Moran?

A Yes.

Q Can you identify him?

A At that time he was assistant regional administrator of the New York office of the SEC.

Q Can you recall anything that he said at the meeting?

MR. FRIED: May I have an objection to this? This is not binding on the plaintiff. This is after the fact, after the closing.

THE COURT: I recognize that it is after the closing and the jury has a right to recognize that.

But that does not mean inferences cannot be drawn backwards as well as forwards.

I think the question was if you remember what Mr. Moran said at the meeting, Mr. Deignan.

A I can't remember it specifically.

Q Can you remember it in general?

A Well, the general impression that remains with

me is that Mr. Moran was a little bit more conciliatory than some of his associates were about the situation at Blair. He sort of took the attitude that he would like to let them work out of their problem but some of his associates took a contrary view. That's the general impression I have.

Q Were the associates subordinate to Mr. Moran?

A Yes, I would say they were.

Q By the first paragraph of the memo it appears that you made it sometime in the afternoon of April 15th upon returning to your office from the meeting, is that correct?

A That's what the memo indicates, yes.

Q Would you look at MM for identification and tell me whether you prepared and directed that memorandum to the file?

A Yes, I did.

MR. BROOKS: I offer it in evidence, your Honor.

THE COURT: Your continuing objection is noted. Anything else?

MR. FRIED: No objection, your Honor.

THE COURT: All right. Received otherwise.

MR. BROOKS: I note that it is a memorandum dated April 21, 1970 showing a reported ratio of 1738

percent by Blair as of March 31, 1970 but taking account of the Foley loan.

Maybe I'd better ask Mr. Deignan to explain that.

Q Mr. Deignan, can you tell us how the Foley loan could be taken account of as of March 31, 1970 when it had not been made until April 3, 1970?

A Well, this is a, shall I say, pro forma adjustment, taking the figures as of March 31st and adjusting them to reflect the Foley loan, liquidation of the secured demand note collateral, and a reduction in AI.

Q So that as of April 21st Blair was taking the subsequent occurrences of the Foley loan and the liquidation of collateral and imposing them backward on to the figures of March 31, 1970, to see how March 31, 1970 then looked?

Is that a fair way of saying it?

A No. It is to bring the figures as of March 31st up to date.

THE COURT: Isn't to say this is the way it would have been on March 31st if these other things had happened by then?

THE WITNESS: Well, you could put it that

way too.

THE COURT: I don't want to quibble.

Q Mr. Deignan, the first paragraph reads, "This morning Joe Kaspereck related the following information on the capital position of Blair, Inc. by telephone to Fred Stock in Washington."

Who is Mr. Kaspereck?

A He was one of the Exchange's examiners.

Q Do you know why Mr. Stock was in Washington on that day?

A No, I don't.

Q Incidentally, Mr. Deignan, where is Mr. Stock today?

A He is deceased.

(Defendants' Exhibit MM for identification was received in evidence)

Q Mr. Deignan, NN for identification before you is a letter dated April 23, 1970, apparently signed by Mr. Rush and addressed to yourself.

Can you identify it as having been received?

A Yes.

MR. BROOKS: I offer it in evidence, your Honor.

MR. FRIED: Again, your Honor, I am going to object to all documents coming in now after the closing.

THE COURT: Well, I noted a continuing objection on your part. It is admitted anyway, but you have no other objection, I take it?

MR. FRIED: No, your Honor.

(Defendants' Exhibit NN for identification was received in evidence)

Q Mr. Deignan, I note that the first sentence states that "Enclosed is a Special Operations Questionnaire prepared as of March 26, 1970," which we have previously identified as Exhibit 40 in this trial.

The letter goes on to say that Mr. Rush will send you a pro forma statement.

Is that the same kind of process that you just described as being a pro forma application of substantive facts to a state of affairs backwards?

A Yes.

Q Let me call your attention to Exhibit OO for identification and ask you if that is thepro forma capital computation that Mr. Rush promised you in Exhibit NN?

A Yes.

Q Did you receive that from Mr. Rush, sir?

A Yes.

MR. BROOKS: I offer it in evidence, your Honor.

THE COURT: All right. The same objection, I assume, and the same ruling.

(Defendants' Exhibit OO for identification was received in evidence)

MR. BROOKS: I would just like to note for the record, your Honor, that the pro forma capital computation as of February 28, 1970, which is the third page, shows that after the Foley transaction and the liquidation of the collateral, which has been previously discussed, Blair had an excess of capital over the capital requirement of $1,147,382 and that as of March 26, 1970, as shown by the second page of Exhibit OO, Blair had an excess of net capital requirements of $513,525.

THE COURT: Mr. Deignan, I can understand why, before the end of April, you might want to make a pro forma capital computation as of the end of March as the last month end or period end.

What significance would a pro forma capital computation as of February 28th have at April 24th, though? This may just be a matter of curiosity on my part, but I am curious.

Once you know where you stood as of March 26th, what difference would it make where you might have stood as of February 28th, if all those things had happened?

THE WITNESS: I have no answer to that right now.

THE COURT: My curiosity will have to go unexplained.

Q Mr. Deignan, am I right in concluding that an excess of net capital over capital requirements means that the firm is in compliance and has the amount of excess as a cushion?

A That's correct.

Q Would you take a look at Exhibit PP for identification before you? It appears to be a memorandum dated April 27, 1970 with your initials.

Can you identify that?

A I prepared the memorandum, yes.

MR. BROOKS: I offer it in evidence, your Honor.

THE COURT: Same objection. Same ruling.

(Defendants' Exhibit PP for identification was received in evidence)

MR. BROOKS: May I read it, your Honor?

THE COURT: Yes.

MR. BROOKS: It is a memorandum dated April 27, 1970 by Mr. Deignan to the file entitled "Blair & Co., Inc."

"This morning I received a telephone call from Mr. Charles Hartman of the SEC staff in Washington, who inquired about our latest information concerning the Blair & Co., Inc. situation. I provided Mr. Hartman with the information appearing on our Capital Flash Report as of April 23, 1970. I explained to him that the capital figures shown as of March 26, 1970 have been adjusted to reflect certain events in April, including the sale of an Exchange membership, acquisition of the Foley loan, and liquidation of collateral underlying secured demand notes.

"I also advised Mr. Hartman of the charges made against capital and reflected in the firm's Special Operations Questionnaire as of March 26, 1970," which we have seen as Exhibit 40 in this trial.

"Mr. Hartman asked me of the firm's intentions with respect to the raising of additional capital and the steps it proposes to take to lower its costs. I referred Mr. Hartman to the letter of April 21, 1970 addressed by Blair & Co., Inc. to the New York office of the SEC in which these two steps were covered."

That, I would note, is Exhibit X at this trial, Mr. Ramsey's letter to Messrs. Duffy and Moran dated April 21st.

"Mr. Hartman said he had only had an opportunity to glance at this letter and I therefore filled him in briefly on its substance.

"Mr. Hartman asked me to keep him advised of any significant future developments."

Q Mr. Deignan, did you keep Mr. Hartman advised of future developments?

A I don't recall now.

Q The next memorandum which you have is Exhibit QQ, which appears to be a memorandum dated May 6, 1970 signed by yourself.

Can you identify it as such?

A Yes.

MR. BROOKS: I offer it in evidence, your Honor.

THE COURT: Same objection and ruling.

(Defendants' Exhibit QQ for identification was received in evidence)

Q Mr. Deignan, this memorandum reports that you called George Morpurgo of Blair to ask him how he was coming on a plan that he was formulating to close Blair's gap between income and expenses.

I ask you to look at Exhibit RR and tell me whether you recognize that as the plan that you were

jgjw 11 Deignan - cross

prodding Mr. Morpurgo to submit.

A Yes, it is.

MR. BROOKS: I offer Exhibit RR in evidence, your Honor.

THE COURT: Same objection. Same ruling.

MR. BROOKS: RR is a letter addressed to Mr. John R. Cunningham of the Exchange from Mr. Morpurgo dated May 7, 1970, with a number of attachments which are indexed on the third page.

(Plaintiffs' Exhibit RR for identification was received in evidence)

MR. BROOKS: Your Honor, I would just like to read the index on the third page as the index of the attachments.

THE COURT: All right.

MR. BROOKS: The index refers to Exhibits I through XIV-B. I will just read the titles and not the exhibit numbers.

"Loss profile, break-even analysis, cost reduction/income improvement summary, total reduction in force, reduction in administrative force, April 15-30, elimination of account executives/reduction of branch support personnel, cost reduction from salesmen's draws, rental reduction, estimated savings-reduction of periodicals,

statistical promotional material, communication cost reduction, travel and entertainment cost reduction, NYSE surcharge benefit."

Q Let me pause a minute, Mr. Deignan. Can you tell us what the surcharge benefit was?

A No, I don't recall at this point.

Q Would it refresh your recollection if I told you that on or about April 1, 1970 the Stock Exchange imposed a $15 surcharge on all transactions?

A Yes. It was a commission increase.

Q A commission increase?

A Yes.

Q Was that an emergency measure, sir?

A I believe it was, yes.

Q What caused that emergency measure to be enacted on or about April 1, 1970?

A I can't remember specifically what it was.

Q But it applied to all firms, did it not?

A Yes.

Q Continuing on:

"Effect of ticket increase incentive program, commission analysis: Impact of NYSE proposed NERA commission structure, surcharge NY commission rate structure vs. current plan, MSESC sample page trade detail printout."

Can you tell me what that MSESC stands for, Mr. Deignan?

A It relates to the Midwest Exchange, I believe their computer arrangement.

Q Are those the initials for the Midwest Stock Exchange Service Corporation?

A That's right.

Q Continuing:

"Blair & Co., Inc. additional quarterly incentive plan for branch managers, Blair & Co., Inc. additional quarterly incentive plan for branch managers quarterly summary. "

If you will take a look at the next exhibit, designated ZZ for identification, I ask you if you recall seeing or receiving that memorandum dated May 13, 1970 from Mr. Stock to Mr. Arning at or about the time it was dated.

A Yes, I did receive it.

MR. BROOKS: I offer it in evidence, your Honor.

MR. FRIED: Same objection.

THE COURT: Same objection. Same ruling.

(Defendants' Exhibit ZZ for identification was received in evidence)

Q Mr. Deignan, I will characterize the memorandum

by saying that it appears to be a memorandum reflecting the Exchange's consideration of a proposed merger between Blair & Co., Inc. and Francis I. duPont & Company and the conclusion reached as a result of discussions with Mr. Chenet and yourself are that that would not be a good merger.

Do you recall that?

A Yes, I do.

Q Did the merger ever take place between Blair & duPont?

A No.

Q Would it be fair to say that the reason why the Exchange did not think highly of the merger was because duPont had as many problems as Blair appeared to have?

A Yes.

Q Mr. Deignan, Exhibit TT appears to be a memorandum with your initials on it dated May 19, 1970, to Fred Stock.

Can you identify it as such?

A Yes. I prepared it.

MR. BROOKS: I offer it in evidence, your Honor.

THE COURT: Same objection. Same ruling.

(Defendants' Exhibit TT for identification

was received in evidence)

MR. BROOKS: I would like to read the memorandum.

THE COURT: All right.

MR. BROOKS: "Last week you asked me to check secured demand notes recently cancelled by Blair & Co., Inc. Jim Rush tells me that one note in the amount of $122,000 issued by Benjamin Harrison, Jr. was cancelled in May. Mr. Harrison had given proper notice and since he is an insider there seemed no alternative but to cancel the note."

Q Does that mean, Mr. Deignan, that Mr. Harrison was paid back the amount he had loaned to Blair through that note?

A Yes.

Q Do you recall consideration of the problem of precluding contributors from Blair from being paid back on the obligations that Blair owed to them when those obligations became due?

MR. FRIED: Your Honor, it seems to me we are going too far afield from this case now. We are not dealing with anybody else in Blair & Company except the Foley group.

THE COURT: Overruled.

Do you remember the question?

THE WITNESS: Could I hear the question again?

(Record read)

A I don't recall it particularly, no.

Q Let's move on --

THE COURT: Could I ask Mr.Deignan a question about Exhibit TT. I don't know if it is of any great significance or not, but in that you said, "Harris had been given proper notice and since he is an insider there seemed to be no offer to cancel the note."

Do you know now why you referred to him as an insider, do you know the relevance of that with regard to whether he was entitled to be paid or not?

THE WITNESS: I think that word is a mistake. I think it should have been "outsider."

THE COURT: Do you recall whether he was or wasn't an outsider?

THE WITNESS: I am sure he was an outsider.

THE COURT: In other words, the implication that an insider had some special privilege is not correct, is it?

THE WITNESS: No, it should be just the reverse.

Q Mr.Deignan, Exhibit UU for identification appears to be a memorandum signed by yourself, dated May 27, 1970, to the files.

Do you recall that?

A Yes.

Q Are those your initials?

A They are.

MR. BROOKS: I offer it into evidence, your Honor.

THE COURT: I assume the same objection.

Same ruling.

xxx (Defendants' Exhibit UU for identification was received in evidence.)

MR. BROOKS: It is headed "Thomson & McKinnan.

"Today, Fred Stock and I met with Ron Morgan and John Maloney, Jr. of Thomson &McKinnon, Inc. Mr. Maloney explained that he has had discussions with Messrs. Morpurgo, Ramsey and Vanderbilt of Blair & Co., Inc. concerning the possibility of taking over approximately 20 of that firm's branch offices.

"However, this will be contingent upon Blair & Co., Inc. providing sufficient new capital to finance aggregate indebtedness resulting.

"The proposal will be submitted to the board of directors of Blair & Co., Inc. tomorrow afternoon and will be considered toeghetr with the DuPont proposal. A decision as to which plan will be accepted by Blair & Co., Inc. should be forthcoming late tomorrow or early Friday.

"Mr. Maloney will keep us advised of significant

developments."

It is signed by Mr. Deignan. There are his initials.

The next exhibit you have, Mr.Deignan, is VV for identification. Is that a memorandum by yourself to the files dated May 28, 1970?

A Yes, it is.

MR. BROOKS: I offer it in evidence, your Honor.

MR. FRIED: No objection.

xxx (Defendants' Exhibit VV for identification was received in evidence.)

MR. BROOKS: I would like to read the first paragraph and the capital ratio.

THE COURT: That is all there is?

MR. BROOKS: There are a number of other entries.

THE COURT: All right.

MR. BROOKS: "Blair & Co, Inc. May 28, 1970.

"This morning Mr. Charles Hartman of the SEC in Washington, D.C. called and asked for the following information with respect to Blair & Co."

There is then a schedule of numbers, among which is a ratio of 2692 per cent.

Q Mr. Deignan, that is not in compliance with Rule 325, is it, sir?

A No, it is not.

Q Do you recall the conversation with Mr. Hartman?

A I remember talking to Mr. Hartman a couple of several times,but I can't pinpoint this.

Q The next exhibit is WW for identification, which appears to be a memorandum by yourself dated June 2, 1970, to the file, about the Thomson & McKinnon possible merger or takeover of Blair's branch offices.

Was this a memorandum prepared by yourself, sir?

A Yes.

MR. BROOKS: I offer it in evidence.

THE COURT: All right. I assume the same objection and the same ruling.

xxx (Defendants' Exhibit WW for identification was received in evidence.)

MR. BROOKS: I would like to read a portion of paragraph 3, your Honor.

THE COURT: All right.

MR. BROOKS: "Blair & Co., Inc. will be required to provide sufficient new capital to finance the Blair & Co., Inc. aggregate indebtedness at a 1500% ratio. It is estimated that such capital will amount to between $4.5 million and $5 million."

Q Is Mr. Maloney from Tomson-McKinnan?

A Yes.

Q "Mr. Maloney stressed that he will insist on new capital because he does not feel that Blair & Co., Inc. is in a position to use any of its existing capital in view of the condition of its records."

The next exhibit which you have before you is Exhibit XX, Mr.Deignan. It appears to be a memorandum from Mr.Stock to Mr. Bishop, Mr.Arning and Mr. Cunningham, dated June 15, 1970, and if I am not mistaken it has your initials in the upper left.

A Correct.

Q Did you see this memorandum at or about the time it is dated?

A Yes.

MR. BROOKS: I offer it, your Honor.

THE COURT: All right.

xxx (Defendants' Exhibit XX for identification was received in evidence.)

MR. BROOKS: I will only note that the memorandum evidences communications between the Stock Exchange and Blair -- Stock Exchange and the SEC in respect to Blair and Co., Inc. on June 11, June 12, June 15 -- twice on June 15.

Q The next exhibit, Mr. Deignan, is Exhibit YY for identification. It appears to be a memorandum from Mr. Stock to Mr. Bishop, Mr.Arning, and Mr. Cunningham, dated June 22, 1970, with your initials in the upper left, Do you see that?

A Yes.

Q Did you see this memorandum on or about January 22, 1970?

A Yes.

MR. BROOKS: I offer it in evidence.

xxx (Defendant s' Exhibit Yy for identification was received in evidence.)

MR. BROOKS: I would like to read it, it is very short.

"During the week ended June 19, 1970, I had daily conversations with the Washington office of the SEC, advising them of the current status of this firm. Most of those conversations were with Mr. Sporkan and he was advised exactly where the negotiations for the sale of offices stood each day.

"In addition, I had a conversation early in the week with Mr. Moran and later in the week with Mr. Duffy of the New York Regional Office, advising them what the current status of this firm was. Most of these con-

versations were at the initiative of the Exchange or were brought up by the Exchange after a discussion of some other situation with the SEC staff."

Signed by Mr.Stock.

Q Mr.Deignan, the next exhibit is ZZ for identification. It appears to be a memorandum by yourself dated June 25, 1970, to the file about Blair & Co. Can you identify it as such?

A Yes.

MR. BROOKS: I offer it in evidence, your Honor.

THE COURT: All right. Same treatment.

(Defendants' Exhibit DD for identification was received in evidence.)

(continued on next page.)

MR. BROOKS: Your Honor, I will try to summarize the memorandum without infringing on fairness.

It is a report of a telephone conversation with Mr. Daley about rumors that the "Exchange intends to padlock Blair", which Mr. Deignan checked and told Mr. Daley were not true.

It contains a report by Mr. Daley on the Thomson-McKinnon negotiations, and a prospect that Blair had for obtaining --

MR. FRIED: Your Honor, I think this ought to be read, because Mr. Brooks is not stating what the memorandum states.

THE COURT: All right. Read it, Mr. Brooks.

MR. BROOKS: "This afternoon Mr. Joseph Daley, counsel for Blair & Co., Inc. called me to report that there is a possibility of new capital coming into the firm in significant amount. However, Mr. Daley indicated that there are rumors to the effect that the Exchange intends to 'padlock' Blair & Co., Inc. in five days. He wanted to ascertain if there was any substance to this rumor before entering into negotiations for the new capital.

"After checking with Fred Stock, I told Mr. Daley that there was no substance to the rumor but that

we would expect the firm to accelerate disposition of its branch offices. In this connection, Mr. Daley said that there is a signed agreement with Thomson & McKinnon, Achincloss with respect to 14 offices. The turnover of the offices is slated for July 31, 1970 and appropriate notice will be sent to the customer involved next Monday. It is also anticipated that a deal will be concluded by next Monday, whereby Weis, Voisin, Cannon, Inc. will take over eight offices. Negotiations are now in progress with several firms concerning six or seven other branch offices.

"I asked Mr. Daley if the persons advancing the capital would be acceptable to the Exchange. He answered in the affirmative but said that we might have some qualms about the source of money which he indicated is an offshore fund. Inany event, they amount involved is such that the individuals advancing it would acquire full control of Blair & Co., Inc."

Q Mr. Deignan, the next Exhibit you have is AAA, which appears to be a memorandum dated June 26, 1970, by a William Freyer to Mr. Stock, and it appears to have your initials in the upper left.

Are those your initials?

A They are.

Q Did you see this memoranda at or about June 26, 1970?

A Yes.

MR. BROOKS: I offer it in evidence, your Honor.

THE COURT: Same ruling.

(Defendants' Exhibit AAA for identification was received in evidence)

MR. BROOKS: It is so short I would like to read it.

"The May P & L" --

Q Does that mean "Profit and Loss"?

A Yes.

MR. BROOKS: --for Blair was released on June 25th showing a loss of $761,000 for the month. Included in this figure was extraordinary income of $370,000 resulting from the sale of seats and firm investment securities. Their loss from operations was therefore $1,131,000.

"While no June figures are available, it is safe to assume that the June loss would exceed $1,000,000 and could be as high as $1,300,000. I would further assume that they will be in a deficit net capital position before the middle of July."

It is signed by Mr. Freyer.

Q The next exhibit is BBB, Mr. Deignan, which appears to be another memorandum by Mr. Freyer to Mr. Stock dated June 26, 1970, with your initials in the upper left. Can you identify it as such?

A Yes. I received the memo.

MR. BROOKS: I offer it in evidence, your Honor.

THE COURT: Same ruling.

(Defendants' Exhibit BBB for identification was received in evidence)

Q Mr. Deignan, would you identify Mr. Freyer for us?

A He had a special title, something like a supervising coordinaror, although that was not the title. But it was his function to make on-the-spot visits to firms where problems existed.

MR. BROOKS: May I read this memo, your Honor.

THE COURT: Yes.

MR. BROOKS: "Mr. Hartman of the SEC called on June 25th to find out the current status of Blair & Co., Inc. I informed him of the following:

"1. Thomson & McKinnon will take fourteen offices and have raised $1,850,000 of new capital.

"2. Interest has been shown and contracts are

being drawn up on most of the other offices with the exception of the two New York offices in which there is no interest.

"3. A news release has been prepared under Dick Levine's name and will be released in the near future."

Signed by Mr. Freyer.

Who was Dick Levine in 1970?

A I don't know.

Q Is it safe to assume that he is an employee of Blair & Company?

THE COURT: I think you will have to assume that just as much as Mr. Deignan.

Q Do you know whether he was an employee of the Stock Exchange?

A No, he was not an employee of the Exchange.

Q Mr. Deignan, during the course of your supervisory coordinatorship of the Blair firm, were the Exchange rules that were applied to the Blair firm the same rules that were applied to the other firms in your alphabetical group?

A Yes.

Q Did you ever receive any instructions to enforce Exchange rules any differently as to Blair than as to any other member firm?

A No.

Q Were the Exchange rules applied to Blair in the same general manner as they were applied to your other member firms?

A Yes.

Q Mr. Deignan, I have looked carefully at all the documents that Mr. Fried has shown you and which I have shown you and admitted into evidence, but I find no reference to the New York Stock Exchange Special Trust Fund.

To your knowledge --

MR. FRIED: Your Honor, I submit this is totally improper. It is counsel's work product.

THE COURT: I will sustain the objection.

MR. BROOKS: I will now state the question.

Q To your knowledge, was any regulatory action of the Exchange in respect to Blair affected by the existence of the Trust Fund?

MR. FRIED: I object to this, your Honor.

THE COURT: Overruled.

A No.

MR. BROOKS: I have no further questions.

MR. LOFLIN: I have no questions, your Honor.

THE COURT: We have about five minutes before

* * *

MR. BROOKS: I have a few, your Honor.

RECROSS EXAMINATION

XXXXXX BY MR. BROOKS:

Q Mr. Deignan, Exhibit 32 in evidence is a July 3, 1969 letter from Mr. Bishop to Mr. Ramsey telling Blair that the Exchange was not going to pursue the dispute about whether Blair had been in capital compliance as of May 31, 1968.

I am going to read you the last sentence of that. Then I am going to ask you a question Mr. Fried asked you on redirect.

"You, I am sure, realize the capital requirements of the Exchange are part of the program which attempts to safeguard the public and it is incumbent upon the corporation and those persons responsible for computing capital to be aware constantly of the capital position as well as being familiar with the capital rule and its supplementary material."

MR. FRIED: Your Honor -- are you through?

MR. BROOKS: No.

MR.FRIED: I am sorry to interrupt. But I don't think this is proper as your recross.

THE COURT: What is the question?

MR. BROOKS: Mr. Fried asked the witness whether

Blair was supposed to adhere to a 1500 percent requirement or the 2000 percent requirement which is prescribed in the rule.

Then he referred to an earlier letter written by Mr. Newman to Blair which he suggested to the witness set a lower requirement than 2000 percent.

I want to read this passage from a letter --

THE COURT: But I thought he already indicated that in his opinion it didn't set a lower requirement.

And I am going to make the same rule I tried to make with regard to Mr. Fried, that anything can be argued from the document. You do not need to ask Mr. Deignan.

MR. BROOKS: Very well.

Q Mr. Fried showed you Exhibit 32, 33-B, 25, 32 and 32-A and ask you if it refreshed your recollection about the first time you learned that Blair had a capital problem in the year 1969.

You looked at these exhibits and said you had never seen any of them before.

MR. FRIED: Your Honor, I submit, this is not sur-recross.

THE COURT: : I am not sure what it is, Mr. Fried, until I hear the question. I only heard the --

Q I would like you to look at them again, sir, and tell me whether they speak of any capital violation other than one as of May 31, 1968.

THE COURT: I will sustain the objection. You can establish that yourself.

Q Mr. Fried asked you on redirect whether you knew of conversion problems at Blair in late '69. And you testified you thought you did.

I would like to show you Exhibit 19-M and call your attention to the last two paragraphs and ask you whether they do not refresh your recollection that the first time you learned of problems with the conversion was on or about January 16, 1970, the date of Exhibit 19-M.

A Yes, that's correct.

Q And is it now your recollection as refreshed from Exhibit 19-M that on or about January 16, 1970 was the first time you had heard of conversion problems at Blair?

A That's correct.

Q And up to that time had you believed the conversion to be going smoothly?

A I did.

MR. BROOKS: Exhibit 72-A was marked for identification and shown to the witness. We don't have

a copy. May I look at that.

I will continue with another question.

Q You were asked by Mr. Fried, and his HOnor asked some questions, about the account of stock certificates and what would result in short security differences.

I am going to ask you whether or not the failure t receive a certificate that was in transit to Blair would result in the absence of that certificate when compared with the record entry which shows the certificate should be there.

A If I follow you correctly, the record indicates that it is in and it hasn't come in yet?

Q It hadn't arrived.

A Then there would be a short difference.

Q So that that would be somewhat different than the housewife who has a shortage of change in her pocketbook, would it not?

MR. FRIED: I object, your Honor.

THE COURT: If I mess things up, Mr. Brooks is entitled to straighten them.

A Yes.

Q And would another cause of a short security difference be a clerk or a machine that writes down "eight"

when it should really write down "six" for securities?

MR. FRIED: Your Honor, are we speculating on the possibilities here, under what conditions there might be --

THE COURT: I think the jury is entitled to understand various conditions under which short differences may exist, yes.

You are all free to argue what the short differences have been established in the record. But the kind of differences ought to be borught to the jury's attention.

Q Would an error in the record entry also generate a short security difference?

A Yes, it could.

Q And in such a case as I have just posted, there would be no shortage but only an error in your bookkeeping?

MR. FRIED: Your Honor, here we are dealing with accountant's statements. We are not dealing with possible shortages.

I must object to this line of examination.

THE COURT: Overruled.

A Yes.

THE COURT: All right. I think that is

sufficient to point out the various types of possible shortages.

Q Mr. Fried asked you whether, if you had 100 shares of AT&T long and 100 shares of General Motors short, that you couldn't reconcile those with each other. Your answer was yes.

That would not preclude you from reconciling those with the books or resolving them in any other way, would it?

A Oh, no.

MR. BROOKS: Did you find 72-A yet, Mr. Fried?

MR. FRIED: Yes.

(Handing)

MR. BROOKS: Thank you.

Q Mr. Fried, I believe, showed you Exhibit 54-A, which is the Securities and Exchange Commission's memorandum of that April 15th meeting about which you also made a memorandum. The SEC's memorandum is dated April 21, 1970.

Mr. Fried asked you whether at that meeting the general thrust was for Blair to report its condition to the SEC.

I want to read to you one sentence from the

letter and ask you if it refreshes your recollection on possibly some other topics. This is from the second paragraph on page 1:

"Mr. Moran briefly reviewed the net capital situation of Blair & Company and the programs which have been and are currently being implemented to correct Blair's net capital problems."

After my reading of that, Mr. Deignan, is your recollection refreshed that the program of regulation that the Stock Exchange was applying to Blair was also discussed at that April 15th meeting?

A I can't remember that specifically, no, sir.

Q Can you remember whether the SEC knew at that time of the restrictions that the Stock Exchange had imposed upon Blair?

MR. FRIED: I object to this, your Honor.

THE COURT: Sustained. For the second time around, all this material is either in the documents or in the record by now, I am quite sure.

MR. BROOKS: I have no further questions. Thank you.

MR. FRIED: May I just ask two questions? Hold me to that. Two.

* * *

reading.

MR. FRIED: I haven't had time to check them.

THE COURT: Well, let's go ahead, and if there are any objections, I will rule on them.

(In open court)

THE COURT: Ladies and gentlemen, you recognize that Mr. Triggs is taking the part of Mr. Ireland.

"Q Mr. Ireland, where do you reside?

"A Lake Forest, Illinois.

"Q Do you have any street address?

"A 900 East Deerpath.

"Q What is your present occupation?

"A Senior Vice-President of the Chicago Corporation."

THE COURT: I just want to advise the jury that the questions in this deposition were actually being asked by Mr. Fried, at least at this stage.

MR. FRIED: Did I state the date? It was taken April 28, 1976.

"Q What is the business of the Chicago Corporation?

"A Investment vanking brokerage.

"Q Is that in any way affiliated with Thomson & McKinnon?

"A No.

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"Q You were formerly employed by Thomson-McKinnon, were you not?

"A Correct.

"Q Was there any intervening firm that you were employed by?

"A No.

"Q When did you terminate your employment with Thomson-McKinnon?

"A September 1971. Is that correct? September '71.

"Q Since that time, you have been with the Chicago Corporation?

"A That's correct.

"Q Is the Chicago Corporation a member of any Stock Exchange?

"A Yes.

"Q Of what Exchanges is that a member?

"A New York, American, Midwest.

"Q Do you have any seat on any Exchange?

"A No.

"Q What are your duties at the Chicago Corporation?

"A Marketing.

"Q When you say marketing, are you talking of marketing of securities?

"A Basically, some fixed managment, fixed asset management and securities, both.

"Q What do you mean by fixed management?

"A Bonds, fixed assets.

"Q Municipal securities, do you handle.

"A I don't personally, no.

"Q Prior to the time you were employed by Thomson-McKinnon, is it a fact that you were employed by Blair & Company?

"A Yes.

"Q Was that the first position you had with any securities firm?

"A Yes.

"Q Before that time, what was your business or occupation?

"A I was with Consolidation Coal Company.

"Q Who first requested or asked that you join Blair & Company?

"A State that question again.

"Q I'll reframe it. I assume before you joined Blair & Company you had a conversation with some representative of that company?

"A Yes.

"Q Who was that person

"A Oliver Vanderbilt.

"Q How long have you known Mr. Vanderbilt?

"A A number of years.

"Q Did he ask that you join Blair & Company organization?

"A We mutually agreed.

"Q As a result of some conversation, you did finally join the Blair Company, did you not?

"A Correct.

"Q And if I am correct, from my understanding of it, it was sometime in June of 1969, is that right?

"A '69, yes.

"Q At about the same time, and I'm asking you direct question because of the fact I'd like to save as much time as I can.

"A Fine.

"Q At about the same time, did you invest or put up $1 million worth of securities with Blair & Company?

"A Yes. Excuse me, the word invest --

"Q I said put up, invest or put up.

"A Right.

"Q Was that as a result of a conversation with Mr. Vanderbilt?

"A Yes.

"Q Can you state as nearly as you can recollect what the substance of that conversation was?

"A I can't refer to any specific conversation.

"Q Take them all together and give us a summary of what was said.

"A Basically, Mr. Vanderbilt suggested that I put a million dollars in securities in the firm, which would draw three percent interest and for that, I would be able to purchase approximately $100,000 worth of common and preferred stock.

"Q At the same time that these talks were going on about your putting up these securities, was there any conversation about your becoming employed by Blair & Company ?

"A Yes.

"Q What was said about that?

"A That I would go to work for Blair at a salary of $12,000 a year.

"Q Did you actually go to work for Blair sometime in June of 1969?

"A Yes.

"Q What capacity?

"A Originally, I was to study to take my allied membership exam and then we would see what would happen,

but probably work with the corporate finance department.

"Q Were you given any title, say in June when you first went with Blair & Company?

"A Not that I recall

"Q You say you were to study for the exam. What form did that study take, was it through formal education or self-study?

"A Self-study.

"Q Were you supplied with any materials for your study by Blair & Company?

"A Yes.

"Q Who supplied those materials to you?

"A Who at Blair?

"Q Yes.

"Q Dick Levine.

"Q Do you recall generally what material you were supplied with to make this study?

"A The usual New York -- I thinkit's called the New York Institute of Finance and New York Stock Exchange pamphlets and brochures.

"Q As part of this study, were you required to read the rules and regulations of the New York Stock Exchange?

"A Yes.

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"Q As part of your study, did you familiarize yourself with the capital requirements of the New York Stock Exchange rules?

"A Yes.

"Q And in this period from June until say, the end of 1970 -- '69, did you devote all of your time to studying the rules, regulations and procedures and methods of conducting an investment business?

"A That and pursuing some hobbies of mine, yes.

"Q When did your sutdy period end?

"A I took my examination in December of '69.

"Q Is it fair to state then between June of 1969 and December of '69 all of your time with regard to the securities business was devoted to studying?

"A That's correct.

"Q Where was the study taking place? Was it at home or at the offices of Blair & Company?

"A Some of both.

"Q Did you transact any business?

"A Do you mean in the form of buying or selling?

"Q Buying, selling, any thing?

"A No.

"Q So, it is fair to state all of your time was devoted, as far as Blair and Company is concerned, to study?

"A Yes.

"Q Now, when for the first time did you become either -- there did come a time when you were made a vice-president of Blair and Company, is that correct?

"A Yes.

"Q When was that?

"A I don't precisely recall.

"Q Well, did that come after the study period?

"A I think I had to pass the exam before I could become one.

"Q And your best recollection, you took the exam some time in December, is that right?

"A Correct.

"Q How long after you took the exam were you notified that you had passed the exam?

"A I don't recall. SEveral weeks.

"Q After you did take the exam andyou passed

the exam, you became then an allied member, did you not, of Blair andCompany?

"A That is correct. Allied member of the New York Stock Exchange.

"Q I'm sorry, of the Stock Exchange in Blair and Company.

"Do you recall whether or not you were elected a vice-president of the company at any meeting of the board of directors of Blair andCompany?

"A I don't recall.

"Q WEre you notified of your election as a vice-president at any time?

"A Obviously.

"Q Now, during the time that you were studying for this exam, were you told by Mr.Vanderbilt you would become a vice-president of Blair and Company?

"A I can't recall.

"Q WEre you told by Mr.Vanderbilt you would be made a director of the company of Blair & Company?

"A I can't specifically recall.

"Q Do you recall whether anyone besides Mr. Vanderbilt told you you would be either a director or officer of Blair andCompany?

"A No, I don't recall.

jgb-3 "Ireland

"Q By the way, Blair and Company is a corporation , is it not?

"A What is the question?

"A It's a corporation?

"A You said 'is'?

"Q Yes.

"A I think it was. Yes, it was a corporation

"Q Do you know the state in which it was organized?

"A No, I don't.

"Q To the best of your recollection, when did you become a director of Blair and Company?

"A Approximately the middle -- after I passed my exam, December, January, I'm not sure.

"Q WEre you elected a director of Blair and Company at a stockholders' meeting or at a directors' meeting?

"A I don't recall.

"Q YOu don't recall whether you were elected to fill a vacancy or whether the stockholders at an annual election elected you as a director?

"A No, I don't.

"Q During the time you were with Blair and Company, were there any meetings of stockholders, to your recollection?

jgb-4 "Ireland

"A Not that I recall.

"Q How many stockholders did Blair & Company have?

"A I don't know.

"Q Just approximately, can you tell us whether it was 100, 200, 500?

"A I honestly can't.

"Q After you became a director of Blair and Company, did you act on any committees of the board of directors?

"A My recollection, the board had only one committee, that was the executive committee and I was not on that.

"Q You were never a member of the executive committee?

"A No.

"Q Do you know who were the members of the executive committee?

"A Mr. Vanderbilt, Mr. Ramsey, I think there were one or two others, but I am not sure.

"Q Did you ever attend any meetings of the executive committee of the board of directors?

"A No.

"Q Mr. Ireland, your first investment or putting

or putting up, whichever way you term it, and I am not interested in how you characterize it, took place on June of 1969, is that right? It was a million dollars?

"A That is correct.

"Q And, if I am correct, you did not put a million dollars in cash but you put securities?

"A Correct.

"Q Of a face value of a million dollars or thereabouts. Was there any time limit on the time within which this money was to be kept at Blair & Company?

"A Well, the origina -- the official agreement said six months, but Mr.Vanderbilt said he preferred I do it for a year."

MR. BROOKS: That is the point at which we have our first objection.

THE COURT: Overruled.

MR. FRIED: Reading).

"Q And subsequent ly, and if my recollection is correct, about August of 1969, you put up an additional securities amounting to almost $2 million or thereabouts, right?

"A Correct.

"Q Now, did you have any conversation with Mr. Vanderbilt or anyother representative of Blair and

Company at the time you put up this additional $2 million?

"A Yes.

"Q With whom did you have such conversations?

"A Mr.Vanderbilt.

"Q Was he the only person at Blair and Company you spoke to about putting up this additional $2 million ?

"A In the substance of putting the money up, yes.

"Q Did you have one conversation with Mr. Vanderbilt or a number of conversations with regard to the $2 million?

"A I don't recall.

"Q State as nearly as you can recollect the substance of whatever conversations you had with Mr. Vanderbilt about putting up this additional $2 million."

MR.BROOKS: Objection, your Honor. It is hearsay. The question calls for a hearsay statement, a conversation between Mr.Vanderbilt and Mr. Ireland, neither of which are here.

THE COURT: And neither is Blair.

Sustained.

You can go to your next question.

MR. FRIED: (reading.)

"Q Did you put up your $1 million at that time?

"A Eventually. At the time I put up $2 million.

"Q As a matter of fact, you put up $2 million?

"A That's right.

"Q Mr. Vanderbilt put up his million dollars?

"A No.

"Q Did you ever ask him why he didn't put up his million dollars?

"A No.

"Q Well, did you have a conversation with Mr. Vanderbilt about putting up, instead of $1 million, $2 million?

"A I'm sure I did.

"Q Do you recall what that conversation was about?

"A No.

"Q Mr. Vanderbilt at any time tell you he couldn't put up the $1 million, therefore, he'd like you to put up two instead of the one he originally requested?

"A No.

"Q At the time you put up the additional 2 million, did you have any conversation with Mr.Vanderbilt about the capital structure of Blair and Company?

"A No.

"Q Did you talk to anyone else at Blair and

Company about the capital structure of Blair and Company?

"A No.

"Q I understand that he asked you to put up $1 million and you put up $2 million, but you have no recollection of the conversation, how one million became two million?

"A No, I don't.

"Q Now, did you learn that Mr.Vanderbilt, say in 1969, August or thereabouts, did not put up the million dollars that he said he would put up?

"A I don't know when it was I did find out, but it was some time later.

"Q When you did find out, did you ask Mr. Vanderbilt why he hadn't put up his million dollars as he promised you?

"A No.

"Q Mr. Ireland, the two million that you did put up in August, was on a 60-day basis, was it not?

"A Excuse me, 90 days.

"Q Ninety days, I am sorry. Did you make a request at the end of 90 days for return of the securities or the cash which you had put up in August?

"A Did I request the money back?

"Q Yes.

"A No.

"Q Did you make any request in writing for the return of that money?

"A No.

"Q Did you make an oral request to anyone at Blair and Company?

"A No.

"Q Was there any reason why you didn't make any such request?

"A Well, the very nature of the way the money was put in on a 90-day basis.

Q At the end of 90 days you had a right to withdraw it, is that right?

"A That's right.

"Q What you're saying is you were not obligated to withdraw?

"A No.

"Q Now, moving along then, did you at any time during the year, 1969, after you put up $3 million discuss with Mr.Vanderbilt or any other representative of Blair and Company what their capital str ucture was?

"A What time frame?

"Q Any time in 1969 up to December 31, 1969.

"A Not that I recall.

"Q It's a fact that by that time you had already put up $3 million with Blair and Company?

"A Correct.

"Q Did it come to your attention at any time priot to December 31, 1969, that Blair and Company was not in compliance with the capital requirements of the New York Stock Exchange and particularly Rule 325?

"A No.

"Q Did you ever make any inquiry of anyone at Blair and Company regarding the capital requirements?

"A No.

"Q At the same time period, did you have any discussion with anyone at Blair and Cmpany regarding the capital requirements under 325?

"A No.

"Q Did you ever hear any discussions between or among any of the other directors or officers of Blair and Company regarding any capital deficiencies?

"A No.

"Q If you can turn your mind to January of 1970 and in order to focus your attention to that, I direct your -- direct you to a meeting which was held on January 15, at the Bankers' Club.Do you recall that?

"A Yes, I do.

"Q Were you personally in attendance at that meeting?

"A Yes.

"Q Who called the meeting?

"A I can't be precise on this, but I think Mr. Ramsey.

"Q Bankers' Club is an eating clib in New York, is that right?

"A I know very little about it.

"Q Well, was this held at a luncheon table, was it held in a room of the Bankers' Club?

"A Large room with a big table, lots of chairs.

"Q How many people were in attendance at that meeting, do you recall?

"A Not specifically.

"Q Do you recall what Mr. Ramsey said at that meeting?

"A In generalities as much as I can cover it. He discussed the Schwabacher-Blair merger. He discussed the operations oftwo back offices, which was very expensive, the conversion which had commenced in late fall of 1969, how the conversion was not going well and the need for more capital in the firm.

"Q Am I correct in assuming that those in attendance

were all officers or employees of Blair & Company?

"A Basically, it was more the investors.

"Q Were they outside investors or inside?

"A I'm not sure if all were either. I think they're mostly inside.

"Q Was there anything said at that meeting?

"A I trust you're using the term 'inside' in the context of security firms?

"Q At that meeting, was Mr. Vanderbilt present?

"A I'm not sure.

"Q What is your best recollection as to the number of people who were present?

"A Approximately 20.

"Q At that time, did Mr. Ramsey distribute any financial statements of Blair & Company?

"A Not that I recall.

"Q Did he discuss any financial statement at that time?

"A I'm not sure.

"Q Did Mr. Rush discuss any financial statement at that meeting?

"A I can't answer that question because I don't know if Mr. Rush was there.

"Q Did Mr. Ramsey discuss the capital requirements

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of Blair & Company at that time?

"A Yes, he did. In relation to Rule 325.

"Q Did he say in words or in substance that Blair & Company was in violation of Rule 325?

"A He said he wasn't sure.

"Q At the time of this meeting, had you been elected a director of Blair & Company?

"A I can't answer that positively. My assumption would be yes.

"Q Well, at the time the meeting was held, were you made aware of the losses that had been incurred by Blair & Company from September on?

"A Yes, in a general way, but not specifically as to amounts or kinds of losses.

"Q To your best recollection, by the time the meeting was held at the Bankers' Club, do you know what the total losses were that had been incurred by Blair & Company as of January 15, 1970?

"A No.

"Q At the time the meeting was held at the Bankers' Club, do you know whether -- or part of that time, do you know whether Mr. Vanderbilt had withdrawn $1,400,000 of his investment?

"A I'm not sure when I did find that out.

"Q You have since learned that he did withdraw that amount of money?

" Yes.

"Q Was anything said by Mr. Ramsey at the Bankers' Club regarding the withdrawal by Mr. Vanderbilt of the $1,400,000 before that meeting?

"A Not that I remember.

"Q Was there any discussion at the Bankers' Club meeting about the condition of the books of account of Blair & Company?

"A What was mentioned was that because of the confusion in the back office, it was hard to know for the accounting to be accurate.

"Q Did he at that time say because of that confusion the books of account were in a pretty bad state of affairs?

"A Not that I remember.

"Q Did he say that because of the condition of the books, it was impossible to tell what the net capital requirements were of the corporation?

"A I can't remember if he said it in that context.

"Q In any context, did he say that because of the condition of the books, they were unable to tell whether they were in compliance or not with Rule 325?

"A He said it more in context of the back office as

opposed to the accounting books.

"Q When you say 'back office,' what do you mean by that, Mr. Ireland?

"A The operations department.

"Q Does that mean the books of account were not up to date?

"A. The operations was one group and the accounting was a different group. The information which the accounting people used came from the operations department.

"Q And did Mr. Ramsey say that it was because the operations group had not brought the records up to date, the accountants were unable to make any evaluation as a result of that?

"A It was the confusion in the back office.

"Q Did you understand it was the confusion in the general office which caused the accountants the difficulty in computing what the capital requirements were?

"A Not in the general office, the back office.

"Q How do you distinguish the back office from the general office?

"A Well, the back office is the operations.

"Q The general office has the accounting and all other executive offices, is that right?

"A I don't think they have that type of a corporate

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structure.

"Q Well, who in Blair & Company was responsible for bringing the accounting figures up to date?

"A Mr. Rush.

"Q To go back just a moment, you mentioned that at the time you put up your $2 million in August, Mr. Vanderbilt stated that an audit was going to be made.

"Did he tell you by whom the audit was going to be made?

"A I don't recall.

"Q Well, did you know whether the audit was to be made by the stock exchange auditors or by Blair & Company's outside auditors?

"A I didn't know.

"Q In connection with the audit, what did Mr. Vanderbilt state to you which required you to put up the additional $2 million?"

There was no response.

"Q Didn't Mr. Vanderbilt tell you an audit was coming up and he'd like to have $2 million more?"

MR. BROOKS: Objection, your Honor, at that point.

THE COURT: Where is this?

MR. BROOKS: Page 28, the bottom of the page.

THE COURT: Sustained.

MR. FRIED (Reading):

"Q Did he tell you what the problem was in connection with the audit which, again I'll say, required your putting up of $2 million?"

MR. BROOKS: Same objection.

THE COURT: Objection.

MR. BROOKS: The objection continues.

THE COURT: All right. Sustained.

MR. BROOKS: The objection continues to page 31, line 14, on the same grounds.

THE COURT: Let me read it.

(Pause)

What line?

MR. BROOKS: Line 14. The objection does not apply to the question on page 31 that begins, "Now, after January of 1970, and I'm not holding you to January 1, 15 or the end of January, ..."

THE COURT: Sustained. I sustain the objection. We'll go to line 14 on page 31.

MR. FRIED (Reading):

"Q Now, after January of 1970, and I'm not holding you to January 1, 15 or the end of January, you then became a full-time employee of Blair & Company, did you not?

"A I've been a full-time employee since June.

"Q You were studying for the exam for the period of June, 1969 and December?

"A Yes.

"Q Then some time after the 1st of the year or thereabouts you devoted most of your time or all of your time to Blair & Company instead of studying for the examination, is that correct?

"A Correct.

"Q From that time forward you received a title of vice president, is that correct?

"A Yes.

"Q What were your duties with Blair & Company?

"A I was working with the corporate finance department.

"Q That means what? See, people will be reading this and they won't understand these terms, so I wish you would explain on the record what you mean.

"A The corporate finance department deals with underwriting, private placement.

"Q What particular phase of that did you take? Were you a statistician?

"A No, just learning.

"Q Were you an analyst?

"A No, just learning what the corporate finance was about.

"Q You were not a customer's man?

"A No.

"Q To whom did you report? This is after January 1970.

"A If anyone specifically, it would have been Carl Goldman, I think his name was.

"Q Well, what was his position with Blair & Company?

"A He was in the corporate finance department.

"Q What title did he have?

"A I can't remember.

"Q Was he a vice president?

"A I can't remember.

"Q After January, 1970, particularly after you became a director, did you receive reports regarding the financial condition of Blair & Company?

"A The only reports I saw would be what you would call operating reports.

"Q Are those operating reports issued on a monthly basis?

"A Yes.

"Q And who prepared those operating reports?

"A Mr. Rush's department.

"Q Did the operating reports indicate the capital structure of Blair & Company?

"A Not that I recall.

"Q Did there come a time, Mr. Ireland, when you were -- when you became aware of the operational problems Blair & Company had in either 1969 or 1970?

"A The operational?

"Q Yes.

"A Certainly during the whole time of the conversion.

"Q When would you say you first became aware of the operational problems?

"A At Mr. Ramsey's meeting.

"Q In January of 1970?

"A Yes.

"Q What were the problems of the conversion you mentioned before, Mr. Ireland?

"A The problems were converting the accounts from manual system to a computer.

"Q This was a monstrous problem, as you once put it, is that right?

"A Correct.

"Q Did there come a time when you were aware your bank loans had exceeded $50 million?

"When I say you, I don't mean yourself person-

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ally; I mean the company.

"A Sitting here in thisroom, I can't remember.

"Q Well, do you recall that the normal bank loans of Blair & Company would have been in the area of 30 to 35 million dollars?

"A I've forgotten these figures.

"Q Do you recall testifying before the New York Stock Exchange?

"A Do I remember that? Yes.

"Q I'll read to you an answer and ask you whether or not this refreshes your recollection.

"'A Taking numbers off the top of my head, I think the numbers could be wrong, but our normal bank loans should have been in the neighborhood of around 30 to 35 million and they'd go up in the range of in excess of 50 million.'

"Do you recall makingthat answer?

"A I don't now, no.

"Q Well, what is your gest recollection now as to whether or not the loans of Blair & Company had exceeded $50 million?

"A My best recollection now? I have none except what you have read to me.

"Q Well, from what you now know, would you say if

your bank loans had gone to a point in excess of 50 million that was a danger signal for Blair & Company?"

Page 37:

"A Well, from my knowledge as of this time, and I knew to a degree at that time, this was a sign of what would happen when you were having back office troubles, so it was logical that the loans would go up when you're having back office troubles.

(Continuing on next page)

THE COURT: I think you can pick up on page 39, in the middle.

"You stated before" et cetera.

"Q You stated before where there were back office operations which were either confused, difficult or there was some problems about it, that it would be natural for the loans to go up, is that correct?

"A Correct.

"Q Is that correct? Is that a fair statement, Mr. Ireland?

"A Is the question you're asking me now, through back office problems, your bank loans will go up?

"Q Precisely. Is that correct?

"A That is correct.

"Q Now, because of a bank problems and the loans going up, would the next conclusion be that there is some difficulty would be the financial structure of the company?

"A You said the bank problem.

"Q Both the back office operations which causes the excess of the bank loans.

"A I am sorry, I don't understand.

"Q You have a combination of back office operations --

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"A Yes.

"Q And the bank loans going up?

"A Right.

"Q Those two elements we understand, don't we?

"A Right.

"Q The combination of those two elements. Now, I ask you, is it not an indication that there is some difficulty in the financial structure of your company?

"A Not necessarily.

"Q Now, when we speak of bank loans in excess of $50 million, do you know whether these were firm loans or customers' loans?

"A I don't know.

"Q Mr. Ramsey -- I am sorry, Mr. Ireland, do you know whether or not the Stock Exchange approved withdrawal by Mr. Vanderbilt in September or November of 1969, don't hold me to the month.

"A I don't know."

MR. BROOKS: Objection, your Honor. There is no proof that that was accomplished.

THE COURT: Well, he said he did not know. There is apparently no evidence in the record yet or may never be that the Stock Exchange approved withdrawal by Mr. Vanderbilt.

MR. BROOKS: Or that Mr. Vanderbilt withdrew. That was the purpose of my objection.

THE COURT: All right.

MR. FRIED: That last statement is not correct. There is evidence in the record as to the financial condition.

THE COURT: I suppose, ladies and gentlemen, the facts are whatever they are in the record, and of course you will have the opportunity to look at that record on any points you wish.

Proceed, Mr. Fried.

MR. FRIED: (Reading)

"Q Again, I am going to suggest that there was an additional putting up -- and I don't want to get involved in any argument about the words, $2 million in February of 1970, is that correct?

"A That's correct.

"Q Did you have a talk with anyone representing Blair & Company about the $2 million additional money you were putting up in February?

"A Yes.

"Q Who was the person or persons you spoke to?

"A The one I most specifically remember is Mr. Richardson.

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"Q What is his position with Blair & Company?

"A I think general counsel.

"Q What is his first name?

"A John.

"Q Do yourecall what he said to you and what you said to him about this $2 million you put up in February of 1970?

"A Basically someone had shown me this letter from Mr. Stock saying that if new capital wasn't put in immediately there would be some restrictions put on the firm.

"Q Who is Mr. Stock?

"A New York Stock Exchange.

"Q Go ahead. Is that as much as you can recall?

"A When you asked me who is Mr. Stock I answered.

"Q I understand, but you were telling us what your conversacion was with Mr. Richardson.

"A I think I said just a moment ago that if more capital wasn't put in immediately therewould be restrictions put in on the firm. Excuse me, did I say more restrictions? If I did, I said it incorrectly. I mean to say restrictions. There were no restrictions at that time, I think.

"Q Did Mr. Richardson say if you didnot put in this additional $2 million, you were jeopardizing the $3

you already had with Blair & Company?

"A No.

"Q Was there any conversation at all about $3 million that you had with Blair & Company invested at that time?

"A Mr.

"Q Mr. Ireland, I am going to show you a copy of a letter dated February 19, 1970, addressed to Mr. James B. Ramsey, Jr. Apparently signed by Fred J. Stock, Jr.

"Will you look at that document and tell me if that is the letter to which you have reference?

"A That's the one I am referring to, yes."

THE COURT: Is that an exhibit here?

MR. FRIED: That is 19-H in this case.

THE COURT: Thank you.

MR. FRIED: (Reading):

"Q Before I get into this letter, Mr. Ireland, between January 15, 1970, which was the meeting at the Bankers Club and the time you saw this letter of February 19, 1970," -- Exhibit 19-H -- "was any action taken as a result of the Bankers Club meeting and the request by Mr. Ramsey that something be done, as far as you know?

"A I don't understand your question.

"Q Did Mr. Ramsey ask for any people at the meeting to put up additional monies?

"A Yes.

"Q Did anybody who was present at that time put up any money besides yourself?

"A I will have to answer I don't know.

"Q When this letter -- I assume you read it when Mr. Ramsey showed it to you?

"A I'm not exactly sure who showed it to me, but I did read it.

"Q Reference is made to the fact --'It is now approximately one month since the above-mentioned meeting', and he's talking about a meeting he had with Messrs. Hepburn and Rush, 'and to the best of our knowledge, there has been no material change in the capital position of Blair & Company.'

"Did you know of the previous meeting that Mr. Stock had with Benjamin Hepburn and James Rush?

"A No.

"Q Was there a meeting of the board of directors in January of 1970 at which you were present, to your knowledge?

"A I don't recall.

"Q Were there more than one meetings in January

1970 of the board of directors?

"A I don't recall.

"Q Did the board of directors of Blair & Company meet on a regular basis?

"A I don't recall that.

"Q Can you tell us to the best of your recollection how often the board of directors of Blair & Company did meet while you were a director?

"A When they were called.

"Q Do you recall how many meetings of the board of directors you attended?

"A No.

Q At the meetings of the board of directors, were minutes kept?

"A Mr. Hepburn was the secretary.

"Q Did Mr. Hepburn make any notes at that meeting?

"A I don't recall. Excuse me. You said that meeting? There is no specific meeting we are talking about, I don't think, at this time.

"Q At the meetings of the board of directors that you attended, did Mr. Hepburn makes notes?

"A I don't recall.

"Q Did you ever see any notes that were transcribed

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and submitted to you after meetings of the board of directors were held?

"A I wish you would rephrase the question and put it in a time context.

"Q I am asking a general question: Was it the practice of Blair & Company after meetings of the board of directors were held to transcribe the minutes and circulate them among members of the board?

"A I can answer that, no.

"Q Did you receive any minutes of the meetings of the board of directors?

"A Shortly before Mr. Hepburn resigned, he gave us, he gave me a whole series of minutes of meetings.

"Q You mean all at one time?

"A Yes.

"Q Do you have those minutes now?

"A Yes."

THE COURT: Those minutes are now in evidence as Exhibit 57.

THE COURT: All right. Since that has been connected up, I believe we can recess now until ten o'clock tomorrow morning.

(The jury left the courtroom.)

THE COURT: I will see counsel in the robing room.

(In the robing room:)

THE COURT: How are we doing, Mr. Fried?

Is Mr. Ireland the last one? I guess you've got an expert, or don't you have one?

MR. FRIED: That is the one you ruled out. You ruled him out as an expert.

I told Mr. Reilly that I intended to recall Mr. Foley for just a few questions, with your Honor's permission, and I also have another witness, who was the personal accountant and had the tax problems.

THE COURT: This can be off the record --

(Discussion off the record.)

THE COURT: Mr. Fried has said he wishes to recall Mr. Foley for the purpose of having Mr. Foley testify that Mr. Foley relied solely on Plaintiffs' Exhibit 2, or at least that it was the only financial --

MR. FRIED: No, no. The documents which he had

MP 2

prior to April 3rd.

THE COURT: Well, hasn't he already said that?

MR. FRIED: He didn't use the word "rely", your Honor. That is the only thing.

MR. REILLY: I would object to that as a matter of form, in any event. I think it is plain he was relying on this cushion to some extent.

THE COURT: Well, I think it would be permissible to ask him if he relied, unless you take the position that that is asking him for a legal conclusion, but hasn't the material already been covered? I guess another way of putting the same thing: because if it has been covered in substance, or if Mr. Foley has said that -- without using the word "relying" -- that he had utilized this statement and other material, I would think it unfair to permit plaintiffs' counsel to highlight this particular document as having some special significance in the total picture.

If the concern is solely about the fact of whether he relied or not, I think from what I have heard that you are free to use the word "reliance" in your argument to the jury. Of course, it's up to the jury to decide whether he actually relied or not.

MR. BROOKS: Have we finished that point?

MR. REILLY: I don't think there is anything in his

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testimony as to reliance.

MR. FRIED: The word "reliance" was not used.

THE COURT: I don't think it is necessary to have the word used to make a prima facie case.

MR. FRIED: That's the question, your Honor. I don't want them to say, "He never testified that he relied on these documents."

THE COURT: Let me ask you this:

Do you contend that the witness must specifically use the word "rely" in order to make a prima facie case? If so, I will allow Mr. Fried to ask him that.

MR. REILLY: Well, no. We do not contend that.

THE COURT: Then it is not necessary. The case will not be dismissed -- at least, I won't dismiss it; I can't guarantee what another tribunal will do -- because he didn't use that word.

MR. BROOKS: I believe we have an objection to the other witness Mr. Fried specified, the tax accountant.

THE COURT: I wouldn't doubt it.

MR. BROOKS: He didn't tell us the purpose for which he is called or his name.

MR. FRIED: Your Honor, here I am supposed to bare my soul to them, and I don't know what they are going to do.

THE COURT: You are supposed to have a pre-trial

MP 4

order, in which all witnesses were named.

MR. BROOKS: We have an extensive list, and I don't think this gentleman is on that list.

THE COURT: Actually, Mr. Fried, under the Civil Rules you are supposed to bare your soul or come very close to it, but in any event, I am afraid you will have to tell us what the name of the person is and what the subject matter of his testimony is going to be.

MR. REILLY: Is this Irving Fredericks?

MR. FRIED: Yes.

MR. REILLY: That's the same gentleman we were discussing this morning.

MR. FRIED: No.

THE COURT: He might be called in one capacity and not in another.

MR. BROOKS: I would like to hear the subject of his testimony.

MR. FRIED: The subject is that he filed the income tax returns for Dr. Foley. If there is a problem, he is still working on it -- a tax problem. The Government has made an assessment on Dr. Foley, which is a damage item.

MR. BROOKS: Well, your Honor, first, he was not named as a witness.

THE COURT: Well, I would not be too concerned about

it if you were aware of the fact that the subject matter would be presented at this trial.

MR. BROOKS: I was not, and there is no suggestion that they are claiming taxes that they had to pay as damages.

MR. REILLY: And they refused to produce the tax returns at the deposition of Mr. Foley in April 1973.

MR. BROOKS: In addition, we do not believe that such damages can be collected by the plaintiffs on the claims they are asserting, and if that is true, to have this evidence go in whether it is irrelevant would be prejudicial, because it would engender sympathy for the plaintiff.

THE COURT: There is no doubt if this is not a proper element of damage it would be prejudicial to put it before the jury. Therefore, I will ask you to give me, the first thing in the morning, or even to phone my chambers first thing in the morning, and give me what authority you have gone by, or even this evening, if you find it within the next hour.

Secondly, I would like you to bring to my attention that place in the transcript of the deposition of Mr. Foley in which plaintiffs' counsel refused to allow his tax returns to go into evidence. I think those are the two key factors.

MR. REILLY: I have those very much in mind, your Honor.

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THE COURT: All right. Obviously, I would want authority from you, Mr. Fried, as much as from the other side. You can have them available, so I can rule tomorrow morning as to whether he can testify on that point.

All right. Thank you, gentlemen.

(Adjourned to June 8, 1976, at 10:00 a.m.)

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J.P. FOLEY & COMPANY, INC.

v. 71 Civil 2987

NEW YORK STOCK EXCHANGE and
AMERICAN STOCK EXCHANGE

June 8, 1976
10:00 A.M.

Trial Resumed

(In the robing room)

MR. BROOKS: One of our colleagues is looking for the pre-trial order, your Honor.

THE COURT: I asked Mr. Turetsky to look for it also.

I take it that you gentlemen received a copy of Mr. Brooks' memorandum.

MR. TURETSKY: Just about three minutes ago.

THE COURT: Well, I guess the best way to proceed is for Mr. Brooks to make his argument in accordance with the memorandum and then you can answer it as you see fit.

I have not looked at it for very long either because I have already dealt with one other matter today.

MR. BROOKS: Your Honor, this is an argument against the proffer that Mr. Fried made yesterday of an

accountant to testify. We would think he would testify as an expert, but Mr. Fried wasn't sure that that label should apply, on the issue of the tax losses suffered by Mr. Foley in connection with the sale of his securities by Blair in and about August of 1970.

We opposed the proffer first on the grounds that the damages requested in the complaint and defined in the complaint, in Paragraph 15, are the original value of their securities when transferred and any increase in their market value to date and during the pendency of this action.

THE COURT: Where are you reading from?

MR. BROOKS: I am reading from Paragraph 15 of the amended complaint as quoted on Page 2 of our memorandum.

THE COURT: All right.

MR. BROOKS: So this was not damages requested by the pleader. Nor has it been requested, nor had we been alerted to the fact that it would be requested in plaintiffs' pre-trial memoranda or their order, which we understood to limit the proof.

The so-called expert or accountant who is proffered, we understand, is not one of the listed witnesses that plaintiffs have put in any of their pre-trial orders.

The second reason we object is that during the course of discovery we requested, in a document request under Rule 34, that plaintiffs produce their income tax returns for the relevant years. They refused.

THE COURT: Did they refuse or just fail?

MR. BROOKS: They did not produce them. We asked again, during the deposition of Mr. Foley, at the transcript of the deposition pages 220 to 222. Again, they never produced the income tax.

THE COURT: May I ask, if you know, was there any expressed theory upon which the Exchange stated that they wished to have the returns or were entitled to review the returns?

MR. REILLY: This theory certainly was not even in our minds. So, whether there was any expressed, I assure the Court that this was not one of them.

THE COURT: You do not know if there was anything expressed?

MR. REILLY: I don't believe there was a specific one, because even in our minds we did not have this as a possibility.

MR. BROOKS: So that we have not had an opportunity to consider the underlying evidence, the tax returns.

The third reason, and perhaps the most persuasive, is that we do not believe that possible income taxes are a proper part of the damages recoverable on a claim under the Securities Exchange Act of 1934.

We searched last night, with a team of three able lawyers looking, and could not find a case in which taxes were awarded to a plaintiff in a 10b-5 claim under the Securities Act of 1934 or any related statute.

We think that if Mr. Foley were to prevail on the issue of liability and to recover the damages which he requests in the complaint, the full value of the securities, and in addition the taxes that he paid on the sale of those securities, he would then have the securities tax free.

That would be a windfall.

It is entirely speculative with Mr. Foley, had he retained his securities, retained them to date, would have traded them. He might have liquidated his whole portfolio, anticipating a market decline. He might have traded some of them and not others. That is entirely speculative and is an improper measure of damages under all of the cases in the Second Circuit, particularly the Levine v. Seilon case which we have cited in our memo.

THE COURT: Right.

MR. BROOKS: Furthermore, under Mr. Foley's agreement with Blair, he was entitled, when his securities were sold out, to receive a debenture of Blair in lieu of the securities. The basis of that debenture would have been the value of the securities when sold out in August.

Mr. Foley commenced a bankruptcy proceeding in September. I don't think anyone would dispute that before the end of 1970 that debenture that Mr. Foley was entitled to receive would have become worthless. That would have been a loss that Mr. Foley could have used to offset the gain that I understand he is claiming.

So that a loss of the debenture should offset the gain and he should not, if he has applied the tax law properly, as we understand it, have any capital gain in 1970.

THE COURT: And if he had not applied the tax law properly, you should not be responsible for his not doing so, I assume would be your argument. And that would leave it to me whether or not he has applied the tax law properly.

MR. BROOKS: That is correct. But I don't believe you have to reach that question, for the other reasons that we have argued.

THE COURT: Gentlemen?

MR. TURETSKY: Could I just mention one thing so far as the Foley deposition was concerned?

At page 222 of the transcript Mr. Milberg stated to Mr. Reilly, with respect to the income tax returns:

"Any information that you request that does not appear on that statement" -- and this was the statement which summarized Dr. Foley's tax situation -- "which has been given to you, which is an extract from the income tax returns, we will be happy to supply. Just ask the question and we will give you the answers."

No questions were ever asked.

THE COURT: Well, there are many other points besides that.

MR. TURETSKY: I did want to bring that to your Honor's attention.

MR. FRIED: I think the basic question is, as Mr. Brooks put it, whether or not, even assuming there had been proper disclosure, that this kind of evidence is admissible.

I want to be perfectly frank to say that I don't have any case except the one in the Second Circuit, I think it is the Beggs case not too long ago, where the Circuit Court did say that income taxes which were within

the contemplation of the parties would be an item of damage.

THE COURT: Was that a securities case?

MR. FRIED: It wasn't a securities case, no. It was a case where there was a breach of the contract and the contract of employment had envisoned the employee to be paid in some foreign currency.

I think it is distinguishable. But the general principle which they enunciated at that time was that if it was within the contemplation of the parties then it could be an item of damages.

Here we have a situation where Dr. Foley, contrary to whatever he intended when he made the subordinated loan, is forced, by reason of what has happened in this case, to have his securities sold. The moment they are sold, and these are securities he's had for a long, long time, his tax base then is very low and he has a capital gain, a very substantial capital gain and the government has a claim against him for some half million dollars.

Now, at that time he is trying to enforce his legal rights, and he had brought an action by the end of the year, so the government says to Dr. Foley, "You cannot take as a loss a claim which is now in litigation."

And that's where the matter stands. But he

does have the liability imposed upon him by the government.

THE COURT: I do not mean to underestimate the discomfiture of Dr. Foley all together as a result of this sad series of events, but I do not think that the material is admissible.

Let's put aside the question of the refusal or non-refusal to produce the tax returns. It seems to me that every other argument that Mr. Brooks has made has merit, of varying weight perhaps but nevertheless has merit.

Furthermore, while I have indicated my sympathy with Mr. Foley's aggravated difficulties as a result of having a tax exposure, I do not think that can be considered within the contemplation of the parties, from any evidence that I have heard in the case so far or that I believe is likely to come before the Court.

And under the circumstances the application to preclude Mr. Foley from proving his tax exposure or liability is granted.

MR. FRIED: Then I will have to release the accountant, because there is no point now in calling him.

THE COURT: How does that affect our schedule?

MR. FRIED: There are a number of things which I still have not received. I would like to know about

those weekly reports.

MR. BROOKS: We searched yesterday for the weekly reports and have found none.

MR. FRIED: That is incredible to me. The Stock Exchange has found no weekly reports that were filed?

MR. BROOKS: Neither, apparently, did your lawyers, who searched our files, find them either.

MR. FRIED: I can't testify to what they found or didn't find.

MR. BROOKS: I would be glad to submit an affidavit to your Honor by the responsible person who made the search.

MR. FRIED: We have that record under subpoena, your Honor, and I think we are entitled to an explanation of whether they exist or not.

THE COURT: Well, you have been given an explanation, at least a conclusory explanation. I think it would be worthwhile to secure an affidavit to give us the precise facts of the search. If the person who made the search can offer any explanations to why those records are not in the files, he should add that, he or she.

MR. FRIED: Mr. Turetsky says they were weekly reports that your Honor sees from Schwabacher, and we can

assume the same kind of reports were submitted by Blair & Company.

MR. BROOKS: Mr. Deignan said yesterday that the Schwabacher report which you showed him and marked for identification was not what he was talking about in respect to Blair and that was not a standard form for such reports by the Exchange.

MR. FRIED: That doesn't make any difference, Mr. Brooks. Whatever the reports are, they ought to be produced, if you have them.

THE COURT: I agree with Mr. Fried that Mr. Deignan was not being asked whether the reports existed. He simply said a particular report before him was not a particular form, and so on.

But I assume that you have understood that Mr. Fried's request for weekly reports applied to Schwabacher, once it was merged into Blair, of course, as much as it did to Blair.

You are not talking about reports, or are you, that were submitted by Schwabacher before the merger?

MR. FRIED: No. We are talking about before. The testimony was that they required Blair to file weekly reports.

THE COURT: Well, then I do not see what difference it makes. We only use those terms for purposes of distinguishing geographically. Actually, it was on wording.

Are we finished, gentlemen?

MR. FRIED: We still have a question of the congressional record.

THE COURT: Well, you have not advised me what you want to put in. We will talk about that after you are finished with the reading of the deposition.

Let me ask this: Is the reading of the deposition going to complete your case or do you have another witness?

I ruled that Dr. Foley could not be recalled for the purpose indicated.

MR. FRIED: No. The reading is all. I have not received notice from Mr. Reilly what portion of the deposition --

MR. BROOKS: I gave that to Mr. Triggs.

THE COURT: Let's see if we cannot finish the reading of the deposition before lunch and then excuse the jury for the afternoon and argue the motions.

MR. BROOKS: Fine.

t2a

(In open court; jury present.)

MR. FRIED: Your Honor, last night when we suspended we were at page 48 of the deposition, at the point where the minutes of the meetings of the board of directors of Blair were produced and offered in evidence.

It is now in evidence in this case as Exhibit 57.

THE COURT: All right.

MR. FRIED: I will start with page 49.

THE COURT: the bottom of page 48.

"Q Do you have any independent knowledge as to when these draft minutes were prepared by Mr. Hepburn?

"A No.

"Q The first draft, which purports to be the minutes of the meeting of board of directors, October 29, states: 'On motion made, seconded and carried, Melville H. Ireland was elected director filled by vacancy created by Steven T. Monahan.'

"Can we establish that as the date you were elected as director?

"A I don't recall.

"Q Still don't recall.

"Mr. Ireland, we were talking about this letter from Mr. Stock sent to Mr. Ramsey, and you stated

Mr. Ramsey or Mr. Hepburn or someone else called this to your attention for the first time -- I am not clear just as to what you said.

"A I said I didn't know who it was.

"Q What is your best recollection now?

"A It would be either Mr. Ramsey or Mr. Richardson, not Mr. Hepburn.

"Q Do you recall what you have told us they showed you this letter and said it was either necessary, desirable, important there be additional capital contribution?

"A I said someone. I didn't say they."

MR. FRIED: I am not characterizing it at all.

"Q Someone told you it was necessary to get more money, is that right?"

MR. FRIED: There is no answer to that question.

"Q To the best of your recollection, what did that someone tell you?

"A I think the letter spoke for itself."

MR. FRIED: May I have the letter we are talking about?

I have stopped reading here, your Honor, to point out that the letter from Mr.Stock to Ramsey is in evidence as 19H and it is dated February 19, 1970.

THE COURT: All right.

"Q I'm talking about what the person told you?

"A I can't recall what they told me, but the letter.

"Q As a result of that conversation, did you agree to put up an additional $2 million, did you not?

"A On a 60-day basis.

"Q At the time you put up this additional $2 millio were you of the opinion it was necessary to do so in order to keep Blair and Company afloat?

"A I can't answer the question as you have stated i

"Q Well, what was your thought when you put up the $2 million?

"A I was told negotiations were pretty well completed with Mr. Foley and his money would be in the firm within a month to six weeks. And I would put this interim money in until such a time as Mr. Foley's capital became good capital.

"Q Who told you you would put this money up on an interim basis?

"A EXcuse me?

"Q Who told you this money was to be put up on an interim basis?

"A I told them.

"Q Who is the them you told it to?

"A Them may be the wrong -- I think Mr. Richardson. Mr. Ramsey might have been present, I don't know.

"Q Did you ever make any notes or memoranda of any conversations you had with Mr. Richardson?

"A Not that I recall.

"Q Did you ever write him any letter?

"A I don't think so.

"Q The fact is that after you put in the $2 million, which was to be returned to you on a 60-day basis, you never did have those securities returned to you?

"A Yes, I did have them returned to me.

"Q How much of the securities were returned to you?

"A All of them.

"Q All 2 million?

"A Yes.

"Q So, your total investment was 3 million now?

"A No.

"Q What was the total investment?

"A I substituted cash for the securities.

"Q So you still had $5 million involved in the Blair and Company?

" Yes.

"Q When did you get the securities returned to you by putting up cash?

"A End of July, early August. Excuse me, I am guessing on those dates.

"Q Well, I am a little confused about it. You were in February told that you would put up -- if you put up $2 million, you could withdraw it after 60 days."

MR. FRIED: That was withdrawn.

"Q When you put up the $2 million in February, you were told after 60 days, you can withdraw it?

"A That was the stipulation I put it up on.

"Q Precisely. Instead of withdrawing it, you put up 2 million in cash and had the securities returned, is that right?

"A You are talking two different times.

"Q I understand that. I say afrer the 60 days expired, you did not have your securities returned to you without putting $2 million in cash.

"A It was subsequent to.

"Q Of course.

"A The 60 days.

"Q I am talking about subsequent to the 60 days.

"Now did you have any conversation with anyone at Blair andCompany to the effect, whydid I have to

to put up 2 million cash when I put the securities up only on a 60-day basis?

"A That was my own choice.

"Q I didn't ask you that. Did you say to anyone at Blair and Company, why am I being required to put up $2 million to get back securities when they were supposed to be deposited only on a 60-day basis?

"A I wasn't required. It was my own choice.

"Q Well, when you made that choice, did you have any conversation with someone at Blair and Company?

"A Yes.

"Q Who was the person that you had a conversation with?

"A I can't say specifically who.

"Q Was it Mr. Ramsey?

"A Could have been.

"Q Was it Mr.Vanderbilt?

"A Again, you are asking me specific questions I am not in a position to answer.

"Q You have no recollection at all?

"A Who the specific person was.

"Q Did you ever send a written notice to Blair and Company requesting that they return the $5 million to you, either in cash or as securities that you had

invested with that company?

"A No.

"Q Did you ever make any oral demand for the return of the $5 million?

"A No.

"Q Mr. Ireland, I show you document dated February 24, 1970, and ask you if you ever saw that before today?"

THE COURT: Is that 19H?

MR. BROOKS: I believe it is 59, your Honor.

THE COURT: All right, may the jury and I be reminded what it is.

MR. TURETSKY: That is the memo of John J. Deignan, dated 2/24/1970.

THE COURT: To whom?

MR. TURETSKY: To himself.

THE COURT: To the file?

MR. TURETSKY: Yes, sir.

THE COURT: All right.

"The Witness: Can I ask where it is from? Is it from the New York Stock Exchange? I don't know.

"Q Do you recognize the initials at the bottom of that, J.J.D.?

"A No.

"Q You never saw it before today?

"A No."

MR. FRIED: That is then marked for identification and it is now 59 in evidence, your Honor.

THE COURT: Thank you.

"Q Will you look at that memorandum," -- Exhibit 59 -- "and see if any of that subject ma tter was ever discussed with your by Mr. Ramsey."

There was no answer.

"Q Anything that you recall discussing with Mr. Ramsey, any of the subject matter referred to in that memorandum?

"A Not specifically, no.

"Q The initials J.J.D. stand for John J.Beignan, who was the senior coordinator of the New York Stock Exchang Do you recall having any conversation with Mr. Ramsey concerning any conversations he had with Mr. Deignan?

"A No.

"Q Do you recall having any conversations with Mr.Vanderbilt concerning any conversations he had with Mr.Deignan?

"A No.

"Q Do you recall any conversations with any other representatives had with Mr.Deignan, if they had any?

"A No.

"Q Now, I just want to backtrack for a moment regarding the$2 million which you put up in February on the 60-day basis and askyou if you recall testifying before teh stock exchange and being asked these questions and giving these answers."

MR. BROOKS: Your Honor, we have an objection at this point running over to the middle of page 58, on the grounds of hearsay.

I may add the witness testified that it didn't refresh his recollection.

THE COURT: Is he being asked about his own prior testimony?

MR. BROOKS: Yes, your Honor, but not in this proceeding, and indeed in an investigation which was completed before this proceeding commenced.

THE COURT: And in which you weren't a party?

MR. BROOKS: That is correct.

MR. TURETSKY: It was taken by the New York Stock Exchange. Here is the transcript.

MR. BROOKS: It was an internal investigation by the STock Exchange personnel, involving the demise of Blair & Co., before this action commenced.

THE COURT: Well --

MR. FRIED: This is part of the deposition, as though he were on the stand and confronted with an inconsistent statement.

THE COURT: Let me look at the statement.

I will overrule the objection.

"Q Was, Mr. Ireland, the last $2 million placed on a 60-day basis?

"A Correct.

"Q Was it an S.D.N. note?

"A Yes."

MR. FRIED: I don't think I have to explain S.D.N.

THE COURT: Subordinated debenture note.

"Q What was Mr. Mansey's reaction to your request to diffuse this $2 million?

"A Desperation.

"Q You are going to have to expound upon that a little bit, sir.

"Q The fact that if I were to withdrawn" --

MR. BROOKS: I object.

THE COURT: Overruled.

"A "-- this money, the firm would have to go into liquidation immediately.

"Q Were you asked those questions by Mr. Morrison

and did you make those answers?

"A I don't recall.

"Q Do you recall having used the expression, 'diffuse $2 million'?

"A I don't recall.

"Q Do you know what the reference was to diffusion of $2 million?

"A Again, I don't recall.

"Q Do you know what S.D.N. stands for? Would you state for the record?

"A Secure demand note.

"Q And you had a secure demand note for 60 days when you put up this $2 million in February, is that correct?

"A Say that again. I signed one.

"Q Mr. Ireland, I am going to show you another document and ask you if you saw that before today, dated March 13, 1970?

"A Are you through with this one?

"Q Yes.

"A I have not seen this before."

THE COURT: What exhibit number is that?

MR. TURETSKY: 60, your Honor.

MR. FRIED: The document was then marked and it

is now Plaintiffs' Exhib it 60 in this case.

"Q Mr. Ireland, did you ever in the year 1970 talk to any representatives of the New YorkStock Exchange?

"A Not that I recall.

"Q Was there any particular person in Blair and Company who was to act as liaison between Blair and Company and the Stock Exchange?

"A No one in particular that I knew of.

"Q Who generally acted as liaison between Blair and Company and the stock exchange on behalf of Blair and Company?

"A Mr. Ramsey, Mr. Rush, Mr. Hepburn, I think on occasions, Mr. Vanderbilt.

"Q At any of the director meetings you attended, was any report made by any of the gentlemen you named regarding conversations they had with New York Stock Exchange representatives?

"A Could you rephrase the question? I can't quite answer it in the manner in which you stated it."

The question was then read and the witness said:

"A I don't remember any specific report.

"Q At any of the directors' meetings that you attended, do you recall any member of the board or any other employee of Blair reporting concerning capital

capital requirements under Rule 325?

"A Not specifically.

"Q At any meeting with any -- was anything ever said about the fact that Blair and Company was not in compliance with Rule 325?

"A No, sir, specifically, any specific conversation or report that I recall.

"Q Well, generally, was anything said about Blair not complying with the capital requirement of Rule 325?

"A I just don't think I can answer the question the way you are putting it.

"Q You said not specifically and now I am asking you generally if anything was said at any meeting you can recollect about the capital requirements or about either violating or complying with the capital requirements of Rule 325?

"A Off the record.

"Q If you don't recall any such conversation, either specifically or generally, I will take that as an answer.

"A I don't recall a specific discussion now.

"Q You see, I still am a little confused. You don't recall a specific -- are you talking about specific conversation or specific meeting?

"A Either.

"Q Okay. Am I to understand, as far as you can recollect, the subject of capital requirements was never discussed at a directors meeting. Is that what you are saying, as far as you can recollect?

"A I would have to answer that no because of the way the question is put."

Over to page 63.

"Q Do you recall if the question of capital requirements was ever discussed at a meeting of the board of directors?

"A Your question is now generally?

"Q Absolutely.

"A Generally, yes, but I can't pinpoint when and how. Generally, yes.

"Q Was there any discussion generally that Blair and Company did not comply with Rule 325?

"A It was a question that no one could answer yes or no to as I was told or heard.

"Q Apparently, from what you now say, there was some discussion about the capital requirements, is that correct?

"A Yes.

"Q And if I gather what you are saying correctly,

you are saying that because of the fact that they could not tell either from the books of account or for other reasons whether they were in compliance or not, no one ever came up with a statement definitely they were or were not in compliance?

"A That is correct.

"Q Now, when for the first time did you learn Mr. Foley was going to put up some money withe the Blair Company?

"A You mean when did their negotiations first begin?

"Q When for the first time did you learn Mr. Foley was going to put up money with Blair and Company?

"A The discussions began end of January, early February.

"Q How were you apprised of that fact?

"A I don't recall specifically.

"Q Did you ever have any discussion with Mr. Foley yourself?

"A No.

"Q The information regarding Mr. Foley's investments came from somebody else in Blair and Company?

"A I only had one discussion with Mr. Foley ever. That was very late July or early August.

"Q This was after his money --

"A Long after. Long after.

"Q Prior to that time, you had never had any dealings with Mr. Foley?

"A No.

"Q And, therefore, all of your information came to you through other sources, is that correct?

"A That is correct.

"Q Who were the persons in Blair and Company that informed you of the fact that Mr. Foley was -- members of his family would put up money with Blair and Company?

"A Various people.

"Q Tell us who they were, to the best of your recollection.

"A Mr.Vanderbilt, Mr. Ramsey, Mr. Richardson, Mr. Rush.

"Q Do you recall what they told you?

"A Nothing specifically. They told me they were negotiating with him.

"Q To your knowledge, did they tell Mr. Foley that when he put up his money, you were entitled to withdraw your 2 million that you had put up in February?

"A I don't know.

"Q To your knowledge, did anyone ever tell Mr.

Foley that when he put up his money, you were going to withdraw your $2 million or had a right to withdraw your $2 million?

"A I don't know.

"Q To your knowledge, did anyone ever tell Mr. Foley that when he put up his money, you were going to withdraw your $2 million or had a right to withdraw your $2 million?

"A I don't know. I might add to that, though. Within his -- at a later date, when I saw the formula under which his capital arrangement with Blair was made, there was money subtracted which was the money which was that money from the Blair capital."

Then Mr. Nelson says: The money you contributed

"THE WITNESS: Yes, it was subtracted out of a computation. It was never specifically written on it. I don't think that it was my money, but it was the right money and this capital was to be withdrawn and not used in Mr. Foley's computation.

"Q When was that?

"A This was part of the agreement he signed that I saw this subsequently and saw where this money was subtracted from the computation.

"Q Was this a computation you had given to Mr.

Foley?

"A No, it was part of the arrangement he worked out with Blair.

"Q We have other proof, so we will let that stand. The thing I am trying to get clear on this record is: As far as you know, Mr. Foley was never told about your to-day loan before he put --

"A I don't know.

"Q YOu don't know?

"A I don't know.

"Q I'll show you a letter dated April 23, 1970" --

That was withdrawn.

"Q Mr. Ireland, I am going to show you a statement and ask you if you saw that after you became a member of the board of directors?

"A Not that I recall."

The document was produced and was marked Exhibit 5 and is Plaintiffs' Exhibit 19 in evidence here. That is a report, special operations questionnaire, which is dated as of December 31, 1969, and is Plaintiffs' Exhibit 19 in this case.

MR. BROOKS: Your Honor, that 19 I have is an affidavit of Mr. Foley in the Vanderbilt action.

19A is the first page of such a special operations questionnaire, which is not in evidence. 19B is the stull copy, which is in evidence. I think the test mony shows that the witness, Mr. Ireland, was shown only the first page, to wit, 19A.

THE COURT: All right.

MR. FRIED: The document was then marked as an exhibit and it is now 19A for identification in this record.

Mr. Nelson said: "I would like to note for the record this appears to be a first sheet of a multi-p document. Based on my own representation that there are additional pages."

Mr.Fried said, "We would be glad to have the entire document as soon as you can furnish it to us.

"Mr. Nelson: I wil l try to furnish it to yo

"Mr.Fried: Thank you."

It was furnished and is now in the case as 19.

MR. BROOKS: 19B.

THE COURT: 19B.

MR. FRIED: We will have to get together on these numbers.

"Q I'll show you a letter dated January 2, 1970, Mr. Ireland, and tell us if you ever saw that before

today. What is the date of that?

"A January 2. I don't recall I ave ever seen it."

This letter was produced and was marked as an exhibit for identification and is now Exhibit 19K in this proceeding, and it is the letter from Mr. McChesney to Blair & Co., and on that letter it states, "We have not received a copy of the statement of the financial condition based upon the 1969 audit of your organization as required by Rule 419.

THE COURT: Mr. Fried, I see that at least for the next while there are a couple of more of these situations in which exhibits were presented to the witness, which he didn't recall. I think you could just specify that and go on.

MR. FRIED: I am perfectly willing to skip that.

THE COURT: All right.

MR. FRIED: There is a purpose for this, your Honor.

THE COURT: All right. Go ahead.

End 2B

MR. FRIED: (reading).

"Q I show you a letter dated January 7, 1970, and ask you if you have ever seen that before today, Mr. Ireland

"A I don't recall seeing it, no."

That letter was produced and marked as an exhibi and it is now 19L in evidence. It is a letter addressed to Mr. Minen of the New York Stock Exchange by James J. Rush. It encloses a statement of financial condition as of September 26.

"Q I will show you another document dated January 16, 1970, and ask you if you saw that before today?

"A No, I have not seen it before."

The document referred to, your Honor, is the memorandum from John J.Deignan, and it is 19M in evidence in this case.

"Q On this memorandum, Defendants' Exhibit No. 19M, is a statement that the firm suffered a loss of $3,567,000. Do you know whether that was a fact as of January 16, 1970?

"A I do not know.

"Q The last paragraph of Exhibit 19M says, 'It was determined that an examiner should be sent to check on current capital position and on the progress of the conversion.' Do you know whether such examiner was sent to t

firm?

"A Yes. I am assuming he was an examiner.

"Q Who was the examiner?

"A I don't remember his name.

"Q Did you have any conversations with the examiner?

"A No.

"Q Who was the person who would be in communication with the examiner when he came to Blair and Company?

"A Here again, I have to give an assumption, Mr. Rush.

"Q Was Mr. Rush in charge of the books of account?

"A Yes.

"Q And he wouldnormally be the person to whom the examiner would go?

"A Normally.

"Q Did Mr. Rush ever tell you the firm suffered a loss of $3,567,000 in January of 1970?

"A No.

"Q Did you ever have any discussion with any other officers or directors of Blair and Company in January 1967 about the losses the firm had suffered?

"A In the generaltiy of losses, but not any specific numbers.

"Q Again, referring to Ireland Exhibit 19M, there is a statement, 'Fred Stock said he had heard rumors conversion of eastern offices to Midwest System had not proceeded smoothly. This was contrary to information I received in telephone conversations with James Rush and George Sacks.'

"Did you ever have any conversations with Mr. Rush or Mr.Sacks to what they had told Mr.Stock?

"A No.

"Q About the conversion of the eastern offices?

"A No.

"Q Who is Mr.George Sacks?

"A He was an employee of Blair's. I think he was compliance. I am not sure. I wouldn't swear to it.

"Q When you say compliance, he was a compliance officer of Blair and Company?

"A I think that was his role. Again, I am not --

"Q His job was to see Blair andCompany complied with the rules and regulations of the Stock Exchange?

"A Compliance refers more in general to compliance of customer accounts. Now, whether the New YorkStock Exchange falls into that too, I don't know.

"Q You say compliance with customers' accounts. What does that mean, securities are properly listed?

"A Right.

"Q And that they are all accounted for?

"A And that all the registered representatives are living up to the rules of the exchange.

"Q Well, did you ever have any conversation with Mr. Rush or Mr. Sacks about the conversion of the eastern offices to the Midwest System?

"A None that I specifically recall.

"Q Did either of them ever tell you they were having any difficulties in the conversions?

"A Not that I specifically recall.

"Q Was there any discussion at a directors meeting about the difficulty of conversion of the eastern offices of the Midwest System?

"A It was thoroughly known throughout the firm it wasn't going well.

"Q It was common knowledge throughout the firm you are saying?

"A Yes.

"Q I show you a memorandum dated February 24, 1970, Mr. Ireland, and ask if you ever saw that before today?

"A I think we have already looked at this one."

MR. TURETSKY: That is No. 3 of the Ireland

deposition, No. 59, the memorandum of John J.Deignan.

MR. FRIED: REading:

"Q Mr. Ireland, I show you memorandum dated February 25, 1970, and ask you if you have ever seen that before today.

"A No, I never have."

That memorandum was marked for identification and it was not received in evidence. It was marked in this case as 81 for identification.

"Q Do you know whether or not this subject matter of Defendants' Exhibit 81 about the take-out provision of your capital contribution of $2 million was discussed at a board of directors' meeting?

"A I don't recall."

I at this time offer Exhibit 81 for identification in evidence in this case.

MR. BROOKS: Your Honor, I object. The witness, Mr. Ireland, said that he was not familiar with the document. There is no foundation for it.

THE COURT: It would seem that is correct, Mr. Fried.

MR. FRIED: (reading.)

"Q Were you ever told by Mr. Hepburn that he had received the authorization for the exchange to have

you withdrawn your capital contribution of $2 million?

"A No.

"Q Did Mr. Hepburn ever tell you Mr. Deignan had told him that the exchange had authorized the 60-day period?

"A No. This was a stipulation on which I put the money up and I said, if they can't get that stipulation --

"Q Mr. Ireland, my question is, did Mr. Hepburn tellyou he had obtained the Exchange's permission for the 60-day period?

"A Not that I recall.

"Q WEren't you aware of the fact that it was a requirement to get the stipulation from the Stock Exchange for the 60-day provision in your loan or investment?

"A That was Blair's problem, not mine.

"Q But you understood they had to get the permission of the Stock Exchange, is that right? Did you understand it was necessary to obtain the Stock Exchange approval for aut horization of the 60-day period?

"A I told them how I would put the money up, and from there on, it was their --

"Q I understand that. But, did you know at that time from your study of the securities business from the fact that you had passed the examination that it

would be necessary for the Stock Exchange to authorize the 60-day period?

"A Yes.

"Q Would Mr. Hepburn be the one who would normally obtain the approval from the Stock Exchange for that condition?

"A Yes. Mr. Hepburn, Mr. Rush, several of them.

"Q John Deignan referred to in this exhibit" --

MR. BROOKS: Your Honor, Exhibit 9 was Exhibit 81 for identification, which has not gone into evidence as the result of our objection. So that I would object to reading or referring to it since it is not in evidence.

THE COURT: Where is the reference?

MR. BROOKS: In the middle of page 77 Mr. Fried refers in his question to Exhibit 9. Then he goes on to say "In the first paragraph," and so forth.

THE COURT: Well, it doesn't seem to me the cat is let out of the bag, Mr. Brooks.

MR. FRIED: N ot yet, no.

THE COURT: Go ahead.

MR. FRIED: (reading).

"Q Mr. Ireland, I show you a letter dated April 1, 1970, from the New York Stock Exchange, addressed to Mr. Hepburn, and askyou if you recall seeing that before

today?

"A No, I have not seen that before.

"Q YOu have?

"A No."

The document was then marked for identification in that deposition and it is in evidence as Exhibit 19J in this proceeding.

"Q In order to shortcut this, may I suggest I will hand these documents to you and have Mr. Ireland look at them and he will tell us if he ever saw any of these documents prior to today. Have you seen any of these documents?

"A This one I saw when it came out and this one, Alan showed it to me at a much later date."

The Alan referred to, your Honor, is the attorney Alan Russo, who was Mr. Ireland's attorney at that deposition.

"Q Where are the documents you never saw?"

Then, your Honor, a number of documents were submitted by counsel for Mr. Ireland and were marked exhibits in that deposition 82 for identification, which is not yet in evidence in this case; 15, which is in evidence, that is, the letter dated March 10, 1970, 48, which is the accountant's supplementary report; 19K, which is the

report of the certified public accountants and dated December 5, 1969; also 19D and 19E, which are in evidence in this case, and they are the report of the certified public accountants, and the second is also entitled "Report of the public accountants."

"Q Mr. Ireland, there are two documents among those papers which you reviewed which you say you haveseen before today. The first is a financial report as of September 26, 1969, which I ask be marked for identification at this time.

"And I askyou, Mr. Ireland, when did you receive this financial report as of September 26, to the best of your recollection?

"A I don't recall. Can I see it a second?"

And I interject at this time, your Honor, that the financial report discussed is Exhibit 2 in evidence in this case.

THE COURT: Right.

MR. FRIED: (reading).

"A It gives the date when it was actually published, doesn't it? Some time after December 5, which is the date on here.

"Q Well, did you actually receive a copy of this or did you see a copy of it?

"A I don't recall.

"Q Did you make a study of the financial statement which appears on this Exhibit 17 when you received it?

"A To the best of my ability.

"Q I direct your attention to No. 3, which says, 'Subordinated borrowings, $22,517,076' and the accompanying statement of which $20,810,000 has been borrowed from stockholders, includes" -- this should be $1,400,000 cash, I believe -- "which was repaid in November 1969, and ask you if you recall having read that statement at the time you received it?

"A What was your question? Did I --

"Q Did you notice that statement at the time you received it?

"A Yes.

"Q Did you have any conversation with anybody at Blair and Company about that withdrawal?"

MR. BROOKS: Objection, your Honor, hearsay the next rhee or four questions.

THE COURT: Well, I would agree that the answer starting "He had borrowed" should not be read. That would be a hearsay answer. The rest merely refers to the fact that there was a conversation.

Do you understand, Mr. Fried?

MR. FRIED: Yes, your Honor.

"Q Did you notice that statement at the time you received it?

"A Yes.

"Q Did you have any conversation with anybody at Blair and Company about that withdrawal?

"A I can't specifically remember who I asked, but I asked what was it, who was withdrawing the capital.

"Q What explanation were you given?

"A It was Mr. Vanderbilt's.

"Q Did you ask why he had withdrawn it?

"A Yes."

THE COURT: Why don't you jump to the next question.

MR. FRIED: (reading)

"Q Did you have any conversation at that time as to what it would do with the capital?

"A No,I didn't.

"Q Of Blair andCompany. Did you make any inquiry about that, what its effect would be on the capital at Blair and Company?

"A No."

A document there dated February 26 was then marked in evidence. That is now 19G in this case, your Honor.

THE COURT: Right.

MR. FRIED: It is a letter on the Blair & Co. stationery, signed by Mr. Ramsey and addressed to Mr. Stock of the New York Stock Exchange.

"Q Mr. Ireland, I ask you when did you receive a copy of this letter, which you said you saw before today, Ireland Exhibit 18, for identification?

"A Mr. Russo showed it to me some time far subsequent to any of this going on.

"Q Did you see it at any time while you were a director of Blair and Company?

"A Not that I recall.

"Q Your testimony then is you saw this for the first time after this action started and after the liquidation of the Blair and Company?

"A Right.

"Q By the way, are you still in communication with Mr.Vanderbilt or any other of the officers or directors of Blair and Company?

"A No.

"Q Do you see Mr. Vanderbilt socially?

"A No.

"Q When did you last see Mr. Vanderbilt?

"A Two summers ago.

"Q How about Mr. Ramsey?

"A Years ago.

"Q You did read the testimony of Mr. Foley, given in the Vanderbilt case, did you not?

"A A long time ago. Excuse me, I may not have. I thought I had, I am not sure. If it was, it was a long time ago.

"Q Well, where was the last time you saw Mr. Vanderbilt?

"A Mr. Vanderbilt?

"Q Yes.

"A I said the summer before last.

"Q Where was that?

"A At a golf tournament.

"Q WEre your relations friendly at that time?

"A Not necessarily.

"Q Now, looking at -- I call your attention to Ireland Deposition Exhib it 8, and will you look at Item No. 3? It refers to short differences. What does the term, short differences refer to, if you know?

"A I am not enough of an accountant to give you an explanation.

"Q Does that mean you are short in securities belonging to customers?

"A Again, it is technical term that I am not fully cognizant enough to make a comment.

"Q At any rate, that is the document you had not se before today?

"A Right.

"Q Was there any discussion among the board of directors in January about shortages with regard to customers' securities?

"A Only in the context of the confusion in the back office.

"Q But there had been some discussion about shortages in customer securities, was there not?

"Mr. Nelson; You said shortages?

"Q There had been some discussion about shortages in customers' securities?

"A And also what the longs were too, both sides.

"Q Are you saying there was a relationship between the longs and the shorts, the deficiencies of the securities belonging to the customers?

"A Here again, you're getting into the accounting back office.

"Q Something you are not familiar with. I am not going to question you about it.

"Look at this item No. 4, Exhibit 19M,

cash margin deficiency of $6,230,000 on secure demand notes charged against capital. Do you know what that refers to?

"A I don't know specifically, no.

"Q Well, do you recall any discussion in January about this cash margin deficiency item of $6,230,000?

"A I would have to say what I think it is, and I am just not positive enough.

"Q Did it relate to Schwabacher?

"A That is what I am wondering in my own mind. Do you know if it does? If you know, maybe I can answer it.

(continued on next page.)

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"Q That's what I'm trying to find out from you.

"A I think it might be the Schwabacher, but I'm not absolutely sure.

"Q Do you know if that was discussed at any board of directors meeting in January or February of '70?

"A The Schwabacher situation was.

"Q What was said about the Schwabacher situation?

"A It was working on a settlement.

"Q Did it turn out there was a cash margin deficiency in the Schwabacher account of $6 million?

"A I don't remember the exact number.

"Q But it was in the area?

"A There was a deficiency. I'm not even sure of what the area was.

"Q Did you talk to Mr. Foley after the investment of Mr. Foley's which was April 3rd, 1970, had already taken place?

"A Subsequently?

"A Yes.

"A Once.

"Q Was that a conversation on the telephone or in person?

"A On the telephone.

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"Q Can you place the date of that telephone conversation?

"A Roughly, end of July, early August.

"Q Did you call Mr. Foley or did he call you?

"A I called him.

"Q What did you say to Mr. Foley and what did he say to you in that telephone conversation?

"A It was in connection with the liquidation of the outside secure demand notes, and I told him that, to the best of my knowledge, at that point, I think he was objecting to his being liquidated, thought his shouldn't be, and I suggested the best information I had, it was better to do it and it would be more chance of saving what was in the firm that way than in any other way.

"Q Had the insiders by that time, the security already been liquidated?

"A The insiders?

"Q Yes.

"A Yes.

"Q Who determined the insiders' position should be liquidated?

"A I can't recall who made the exact decision.

"Q Was it discussed at any meeting of the board

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of directors?

"A Yes, it was.

"Q Was it discussed with any members of the Stock Exchange?

"A I don't know about that.

"Q Whose responsibility would it have been to discuss it with the Stock Exchange?

"A I would say it was important for Mr. Ramsey or Vanderbilt.

"Q Had it come to your attention either one of them discussed the matter with the Stock Exchange?

"A I'm not sure.

"Q Well, do you recall that Mr. Foley did put up his money or securities on April 3, 1970?

"A Yes.

"Q And on April 6th, liquidation of the accounts had been directed?

"A If that's the correct date. I'm not sure it's the correct date.

"Q Did anyone, to your knowledge, tell Mr. Foley that this liquidation was going to take place?

"A I don't know.

"Q As far as you're concerned, you don't know?

"A I don't know if anyon did or did not, no.

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"Q Did anyone at Blair & Company tell you that they had been working with the New York Stock Exchange in order to try to salvage the situation as best as they could?

"A At what point in time?

"Q In April, just before the liquidation was ordered?

"A I don't think your statement is correct.

"Q Well --

"A That a liquidation was ordered in April.

"Q What happened on April 6th?

"A You're talking about the liquidation of the insider SDN?

"Q Insider account, yes.

"A I'm sorry. I was listening to a different context.

"Q You're talking about the liquidation of the entire company. I'm not talking about that. I'm talking about liquidation of the insider account.

"A It was the question before that.

"Q What happened on April 6th with relation to the liquidation of the insider accounts?

"A What happened?

"Q Yes. What happened on the date that the

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liquidation was supposed to take place?

"A Telegrams were sent to all of the SDN accounts and told either substitute cash or have the account liquidated.

"Q When those telegrams were sent out, were they sent out in accordance with the board of directors' meeting directive or were they sent out because of some other obligation?

"A The board voted to liquidate.

"Q Did the board have a formal meeting when they voted to liquidate the insiders' accounts?

"A Yes.

"Q When was that meeting held, if you recall?

"A I don't recall.

"Q Do you know whether Mr. Foley was told about the action of the board?

"A No, I don't.

"Q Do you know whether or not a written notice of the meeting was sent to all of the directors of Blair & Company before the meeting was actually held?

"A I'm not sure.

"Q Well, how long before the meeting was held was notice given to the directors, if you know?

"A That this action was to be brought up at the

meeting, is that what?

"Q Yes.

"A I don't recall.

"Q That time who was the presiding officer of the board of directors?

"A Mr. Vanderbilt.

"Q Did he call the meeting,to your knowledge?

"A I don't recall.

"Q Did you attend the meeting at which the resolution was adopted to liquidate the insiders' accounts?

"A Yes.

"Q Who presided at that meeting?

"A I can't -- I don't remember.

"Q Did it ever come to your attention that any member of the board of directors ever told Mr. Foley that they were going to have a meeting for the purpose of liquidating the insiders' accounts?

"A I don't know.

"Q Mr. Ireland, in this telephone conversation with Mr. Foley after the liquidation of the -- after the resolution was adopted, was it your concern Mr. Foley would hold up the liquidation of those accounts?"

There is no answer.

"Q What prompted you to make the telephone conversation with Mr. Foley?

"A I had heard somewhere in the firm that he was objecting to his stocks being liquidated.

"Q And how would that affect your interests or the interest of any other firm?

"A It would affect the firm to the extent they wouldn't have received the capital.

"Q Were you told at thattime that members of the Stock Exchange were concerned about Mr. Foley holding up the liquidation of those accounts?

"A I'm not sure if I heard that or not.

"Q And this telephone conversation, was there anything said about returning securities to Mr. Foley in return for his withdrawing his objections to the liquidation?

"A I don't understand you. Return his securities to him?

"Q Yes.

"A I don't think so, no.

"Q In this conversation again, did you and Mr. Foley discuss anything about his withdrawal rights?

"A Not that I remember.

"Q How long was the conversation you had with

Mr. Foley, Mr. Ireland?

"A I can't -- I don't recall.

"Q Was this only one conversation you had with Mr. Foley?

"A I think so.

"Q Did you give him a telephone number at which you could be reached so he could call you on another occasion?

"A I'm not sure.

"Q Did you, by any chance, give him a telephone number which was in New Hampshire?

"A I have no connection with New Hampshire. I don't think it could have been.

"Q Do you have any summer home or any --

"A Yes, in Maine.

"Q Maine. Did you give him a telephone number in Maine?

"A I could have.

"Q Do you recall whether you had a further conversation with Mr. Foley in Maine?

"A I don't recall.

"Q What was the purpose of your calling Mr. Foley?

"A To try and get on the orderly business of

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liquidating the outside accounts.

"Q Wasn't it basically so he would withdraw his objection to the liquidation of the insider accounts?

"A You're confusing insider and outsider.

"Q Well, you unconfuse me then.

"A The insiders were done long before.

"Q That was done?

"A Long before.

"Q Mr. Foley was objecting to the liquidation of the outsider accounts?

"A Only his own.

"Q What was your purpose in calling him? To withdraw his objection?

"A Yes.

"Q What were you going -- what would you hope to accomplish by having him withdraw his objection?

"A To orderly get the job done.

"Q Did anyone at Blair & Company ask you to call Mr. Foley?

"A No.

"Q Did you do this entirely on your own?

"A Yes.

"Q Mr. Ireland, assume Mr. Foley took out his securities. What impact would that have had on Blair

and the New York Stock Exchange Special Trust Fund, do you know?

"A What effect would it have had?

"Q Yes.

"A Had he withdrawn his capital?

"Q Right.

"A I can't remember in that particular context what effect it would have had.

"Q If he had withdrawn his securities, it would have reduced the capital fund of Blair & Company and their requirement under 325, would it not?

"A I don't think 325 was at issue at this point in time.

"Q If he had withdrawn his securities, would the capital in the Special Trust Fund have been affected?"

Top of page 97.

"A I am afraid I don't know how to answer that, to be honest with you.

"Q Basically, what was your purpose in having Mr. Foley -- in calling Mr. Foley at this time in July or August and having him withdraw his objection to the liquidation of that Special Trust Fund, having his securities withdrawn rather?

"A I can't remember where we stood with

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Thomson-McKinnon in that time frame and what was going on within the firm and what plans were working where this tied into it, and I just --

"Q You are saying you made this telephone call entirely on your own without consulting with any other members of Blair & Company?

"A That is correct.

"Q What was Mr. Foley going to get out of this action on his part not to withdraw, what benefits would he achieve?

"A There was a reason at the time, and I can't remember today what it was.

"Q I'm sorry, I want you to bear with me for just a moment because -- I want to get this just clear.

"Was anything said about Mr. Foley getting back the Rogers and Richardson stock in this telephone conversation?

"A In our discussion he said that's the one thing he absolutely did not want sold.

"Q Was what?

"A The Roberts -- whatever the company name was.

"Q Rogers and Richardson?

"A Is that the proper name?

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"Q What did he say about that?

"A Very personal holding to him and very close to the firm and he really didn't want that sold.

"Q What was your reply to that?

"A I said I thought I would see if possibly Blair would agree to that, selling all but that.

"Q Did you get Blair to agree to that?

"A I discussed it with Mr. -- I'm not too sure which people I said it to. I better not say names, but there were two people in Blair and this is what Mr. Foley -- I think Mr. Foley will do, and that is when I left and went to Maine.

"Q What happened with his account when he went to Maine?

"A With his whole account? No, I don't.

"Q At that time, did you have any discussion with anyone at Thomson-McKinnon taking over the affairs of Blair & Company?

"A I don't know the relationship of the time between the two was. I can't remember.

"Q Was the Stock Exchange at that time conferring with Thomson & McKinnon and Blair & Company about the takeover of Thomson by Thomson-McKinnon of the Blair operation?

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"A I've lost track of the time frame of when these various things happened.

"Q Just a minute. Looking at Exhibit No. 82, it is a memorandum dated October 20th and see if that refreshes your recollection as to whether or not you had any conversations with either representatives of the Stock Exchange or Blair & Company or Thomson-McKinnon about trying to influence Mr. Foley in his action?

"A This is October 20th and I had been gone from there for a month and a half or month. I never did this. I never asked too.

"Q Who was George Morpurgo?

"A He was executive vice-president.

"Q Of Blair & Company?

"A Yes.

"Q George feels that Ireland has some influence over Foley and might be helpful along these lines as Mr. Haack would ask his help.

"What influence was he referring to, do you know, you had over Mr. Foley?

"A I can't say specifically.

"Q Who was Mr. Haack?

"A I think he's New York Stock Exchange.

"Q Do you know what this reference is,

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'Ask Mel Ireland if Blair intervened with the Foleys to attempt them to get them not to press the bankruptcy petition'?

"A Again, I'm at a loss as to what was going on. I was over at Thomson-McKinnon at this time so --

"Q Was there a bankruptcy petition then under examination or filed against Blair & Company?

"A I'm not sure.

"Q When did you go with Thomson-McKinnon?

"A Some time in September, about the middle, I think.

"Q Who is Pat Scorese, do you know?

"A I think he's a New York Stock Exchange man."

Then there is some colloquy, your Honor. Then there was cross examination by Mr. Nelson.

Your Honor, I,at this time, again renew my offer in evidence of Exhibit 82 for identification.

MR. BROOKS: There is no foundation for it, your Honor. The witness has testified --

THE COURT: On what basis can I accept it?

MR. TURETSKY: It comes from the files of the Exchange and it is signed by, I think, Mr. Bishop. His initials are on it.

(Pause)

MR. BROOKS: I would also object on the grounds of time, your Honor. It is considerably after the events under discussion. And it was after the liquidation. The bankruptcy proceedings had begun.

THE COURT: I am afraid this is much too far removed. The witness cannot identify it. It is from one man to a second, suggesting that a third and fourth suggest something to a fifty, to ask this witness who does not know anything about it to do something with Mr. Foley. I really believe it is too remote. And there is really some reference to it in the questioning.

MR. FRIED: Yes, there is.

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(Pause)

MR. FRIED: This is the cross examination of Mr. Ireland by Mr. Nelson.

THE COURT: Who is Mr. Nelson?

MR. FRIED: The gentleman sitting right here, a member of Milbank, Tweed.

THE COURT: Why not let Mr. Nelson read that? Do you mind? I find the inflections come through better.

MR. FRIED: I would be pleased to let him read.

THE COURT: Thank you. I thought you did a great job of acting yourself.

MR. NELSON: I hope that Mr. Brooks won't press his objections too strongly.

MR. NELSON: (Reading) This is 102.

"Q Mr. Ireland, did you in the period from the beginning of 1970 through the time you left Blair have any conversations with anyone at the Securities and Exchange Commission concerning the affairs of Blair?

"A No.

"Q Did you have any discussions at any board meetings, do you recall any discussions at any board meetings that you attended concerning reports as to

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the condition of Blair to the Securities and Exchange Commission?

"A Not in any specifics.

"Q Do you recall some general discussions on that subject matter?

"A The only subject matter that I could say of fact was going back to Mr. Ramsey's meeting of January whatever, 15th, that he was going to tell the condition of Blair to both the Securities Exchange Commission and the New York Stock Exchange.

"Q Did Mr. Ramsey report on his meeting with the Securities Exchange Commission to the Blair board?

"A Not that I recall.

"Q Did Mr. Ramsey or anyone else at Blair & Company convey to you in any other context what Mr. Ramsey had reported to the Securities Exchange Commission at that time?

"A Not that I remember.

"Q You were merely aware a report was to be made?

"A That's all.

"Q Did you ever discuss with anyone at Blair what facts should be reported to the Securities Exchange Commission?

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"A No.

"Q Did you ever have such discussions concerning such reports to the New York Stock Exchange?

"A No.

"Q I think you've testified that in June of 1969 you purchased common stock and preferred stock in Blair and contributed a secure demand note collateralized by approximately a million dollars worth of securities. Is that true?

"A I don't think contributed is the right word. I did enter into that type of an agreement, yes.

"Q And in connection with that arrangement, did you submit an application for approval to the New York Stock Exchange?

"A Yes.

"Q Were you subsequently approved by the New York Stock Exchange?

"A Yes.

"Q And you've also testified in August, 1969, you deposited approximately $2 million worth of securities with Blair, is that not correct?

"A Correct.

"Q Do you know whether any additional approval of your status as a secured demand noteholder was required

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from the New York Stock Exchange at that point in time?

"A I don't know.

"Q Do you know what account the securities, the $2 million worth of securities that you deposited in August, 1969, were deposited?

"A No, I don't. What account?

"Q Yes. Was it an account you maintained with Blair?

"A I don't know the technicalities of how it was set up in the --

"Q In that connection, I'd like to show you a document"--

Will you mark this for identification as CCC.

(Defendants' Exhibit CCC marked for identification)

MR. NELSON: (Reading)

"Q I show you a five-page document which states on the face of it Mr. Melville H. Ireland SDN account and below that in account with Blair & Company, Inc. for the period ending September 26, 1969.

"I ask you if you've ever seen a copy of that document before?

"A No. These reports went to Cleveland.

"Q Mr. Ireland, I'd like to draw your attention

to Page 2 at the bottom and Page 3 of the document and ask you whether the securities listed there refresh your recollection as to the securities that you had on deposit with Blair & Company as collateral for your secure demand note?

"A I don't remember what specific ones they were. This could well be. It must be.

"Q Do you recall the amount of the total -- the approximate amount of the total contribution which you had made to capital of Blair at that point in time in the form of an SDN? Was it a million dollars? September of 1969 was a million dollars in June and $2 million in August, is that not correct?

"A That is correct.

"Q And I draw your attention to Page 3 of this document which contains the handwritten notation $3,105,304.5 Is that the approximate amount of your SDN account with Blair at that point in time?

"A Yes. September 26th, yes.

"Q Based on your review of this document, is it true that both the securities deposited in June and the securities deposited in August were placed in the same account with Blair?

"A Looking at this, I would say yes.

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"Q Mr. Ireland, you testified you learned in some point in time Mr. Vanderbilt had withdrawn 1.4 million dollars and you later looked at a statement of financial condition of Blair as of September, 1969, which in Footnote 3 referred to withdrawal subsequent to September 29, 1969, of the $1,400,000.

"Is this the source from which you learned that withdrawal had been made in that amount?

"A Yes. Excuse me, I think you called that a statement of financial condition. I don't know if that's the proper title for it, but whatever the proper name should be" --

MR. NELSON: And then the document is identified as Plaintiffs' Exhibit 2 at this trial.

THE COURT: All right.

MR. NELSON: (Reading):

"Q Mr. Ireland, do you recall when in the summer or fall of 1970 you went to Maine?

"A In '70? Practically every weekend."

THE COURT: Now there is questioning by Mr. Reid. Who is Mr. Reid?

MR. NELSON: Your Honor, I would like to offer Defendants' Exhibit CCC in evidence.

THE COURT: Actually formally offer it at

the trial. Is there any objection?

MR. FRIED: The witness didn't identify this. He was just show it. There is no foundation.

THE COURT: I think not. If you want me to inspect it, I will do so.

MR. REID: (reading)

"Q Mr. Ireland, during the period of your employment by Blair, did you have any communication, oral or written, with -- and by that I mean, to you and from -- to you from or from you with any officers or director, employee of the American Stock Exchange?

"A Only the extent of the forms as a result of becoming an allied member.

"Q Which forms were those?

"A I don't recall them. Blair filled them all out and after I took my exam, I think I got the same membership with you that I have with the American -- I have with the New York.

"Q YOu believe you signed a form?

"A I believe I did. I am not sure.

"Q Other than that?

"A Nothing."

That closes the examination.

THE COURT: All right. Now, have you and Mr. Fried agreed on the earlier deposition inthis matter? Are there any points I have to rule on?

MR. BROOKS: We have submitted to Mr. Fried the pages which we propose to read.

THE COURT: All right, ladies and gentlemen,

we will take a recess.

(Recess.)

MR.BROOKS: Your Honor, with your permission, I will read the questions from the deposition of Mr. Melville H. Ireland, taken on December 12, 1974, and Mr. Nelson L. Reid the answers.

THE COURT: All right.

Ladies and gentlemen, you will understand that this is an earlier deposition of Mr. Ireland. The one you heard before was taken about six weeks ago, and this was taken in December of 1974.

MR. FRIED: It was a reverse situation, your HOnor. It was taken by the defendant.

THE COURT: That is right. Mr. Nelson was the examiner at that time.

Now he is acting as Mr. Ireland.

All right,y ou understand that, ladies and gentlemen?

MR. BROOKS: Your Honor, we have furnished to Mr. Fried the pages we intend to read. If your Honor would like to have a duplicate of that, youcan follow it with us.

"Q Mr. Ireland, did you ever make an investment in Blair pursuant to a secured demand note arrangement?

"A Is that the same as a collateral agreement?

"Q Roughly, yes. I mean a note with an accompanying collateral agreement.

"A Yes.

"Q When was the first time you made such an investment?

"A June of 1969."

"MR. BROOKS: Could you mark as Defendant Ireland Exhibit D a document headed "Ireland Secured Demand Note, dated June 1, 1969."

This has been marked Exhibit 100 for identification in a deposition conducted on July 6, 1972, and there then was marked in the Ireland Deposition Exhibit D, which for purposes of this trial I have marked Defendant Exhibit DDD for identification.

"Q Mr. Ireland, did you recognize the signature on page 1 of that document as being yours?

"A Yes.

"Q What about the signature on the last page?

"A Yes.

"Q Is this a copy of the secured demand note collateral agreement that you made with Blair in June of 1969?

"A Yes.

"Q Did you pledge securities with Blair as security for payment of the note?

"A Yes.

"Q What was the approximate market value of those securities?

"A I can only recall approximately. It was right at the middle" --

Your Honor, with that foundation I would like to offer Defendants' Exhibit DDD in evidence.

MR. FRIED: No objection.

THE COURT: All right.

xxx (Defendants' Exhibit DDD for identification was received in evidence.)

MR. BROOKS: I am going to read a short passage from the exhibit , your Honor. So I will furnish you with a copy.

THE COURT: Thank you.

MR. BROOKS: With the Court's permission I would like to read from paragraph V on page 2 of the collateral agreement portion of Exhibit DDD.

THE COURT: All right.

MR. BROOKS: It is entitled "Withdrawal of note.

"(A), subject to the conditions herein provided, the undersigned shall have the right at any time prior to

a demand by the corporation for payment of the note to withdraw the note and collateral. Such withdrawal shall be effective at the expiration of six months after the end of the month in which written notice is given to the corporation by the undersigned or at such earlier date as the corporation may specify in writing."

Then, with the Court's permission, I would like to read from paragraph VI, (b).

THE COURT: All right.

MR. BROOKS: VI is entitled "Return of Note and change in principal amount." Subparagraph (b): "The Corporation may on the first day of any calendar month increase the principal amount of the note to an amount not more than that for which the collateral in the judgment of the corporation (which shall be conclusive) is adequate security."

I intend to stop there unless anyone would prefer me to read on.

THE COURT: All right.

"Q Did there come a time when you placed additional securities with Blair in an account securing your secured demand note to Blair?

"A Yes.

"Q Do you recall when this next occurred?

"A August of 1969.

"Q Do you recall the market value of the security which were placed with Blair at that time?

"A Approximately $2 million.

Q I will withdraw the question: --

That refers to a question other than the immediately preceding one. The next one on my schedule is page 21, at line 19.

"Q I will withdraw the question and ask you whether in August of 1969 you had any communication with the New York Stock Exchange or officer, governor or employee of the New York Stock Exchange?

"A Not that I recall.

"Q Did there come a time when you placed additional securities with Blair and subordinated them pursuant to a secured demand note and a collateral agreement?

"A Yes.

"Q When was that?

"A February of 1970.

"Q What was the market value of the securities subordinated at that time?

"A Approximately $2 million.

"Q Mr. Ireland, I show you Defendants' Exhibit Ireland G-1" -- I have marked that at this time as

Defendants' Exhibit EEE for identification in this trial.

"Q -- and askyou whether you recognize your signature, the signature of yourself on page 7, the first signature?

"A This is my signature."

At this time, your Honor, I offer Defendants' Exhibit EEE for identification in evidence.

MR. FRIED: No objection, your Honor.

THE COURT: No objection. As I understand it, it is a copy of the collateral agreement b etween Blair and the witness dated February 27, 1970, is that right?

MR. BROOKS: Yes, that is correct.

THE COURT: All right. It is received.

xxx (Defendants' Exhibit EEE for identification was received in evidence.)

MR. FRIED: I didn't hear your Honor's question.

THE COURT: My question was merely to identify the document as the collateral agreement between the witness and Blair.

d 4B (continued on next page.)

"Q Were there any communications between you and the New York Stock Exchange or any officer, governor or employee in February or March of 1970 concerning this secured note and collateral agreement?"

Referring to EEE.

"A Not that I recall personally.

"Q Did there come a time when Blair demanded payment of your secured demand note outstnading under the collateral agreement between you?

"A Which collateral agreement?

"Q In or about April of 1970. Do you recall any demand?

"Well, I will say the first collateral agreement, dated June 1, 1969.

"A Yes.

"Q Do you recall whether securities were sold from that account?

"A Yes, they were.

"Q Did you receive the cash which was obtained on t liquidation remain with Blair?

"A Yes, to the best of my knowledge.

"Q WEre any of the securities which were pledged by you to Blair & Company held in an account as security under the collateral agreement dated June 1, 1969,

returned to you?

"A To the best of my recollection, I received none of the securities pledged in June or the securities pledged in August of 1969. I did receive securities pledged on February 27, 1970.

Page 37.

"Q When you received those securities, cash was substituted for those securities, cash or other assets of an equivalent value?

"A That is correct.

"Q Did you receive any cash payment from Blair on account of any of the investment which you had in Blair other than the interest which was payable on your securities which were subordinated?

"A To the best of my recollection, there may have been $69,000 in cash in the final sale. Sale is not the right word. In the exchange for securities for cash - August. Otherwise, no."

That completes our reading.

THE COURT: All right.

Is there anything you want to read from this deposition?

MR. FRIED: Yes, your Honor.

Top of page 29.

"Q What happened to the cash?

"A They replaced it with a debenture."

Page 45.

A JUROR: He said it was replaced by a debenture?

THE COURT: You want to know what a debenture is?

JUROR: Yes, inthis particular case.

THE COURT: I will ask the parties to see if they did agree with my definition. A debenture is an instrument of indebtedness. It is an acknowledgement of th debt.

MR. FRIED: Page 45, line 21.

"Q Mr. Ireland, how did you first come to be introduced to Blair & Co., Inc.?

A Through Mr. Vanderbilt.

"Q Did you know Mr. Vanderbilt previously?

"A Socially, yes.

"Q What were the circumstances when you first discussed Blair with Mr.Vanderbilt?

"A My circumstances?

"Q Where was it?

"A At the Racquet Club in New York.

"Q Who introduced the subject matter?

"A Mr. Vanderbilt.

"Q What did he say to you?

"A He suggested that I come to work for Blair & Co. and learn the securities business.

"Q Had he known you were interested in finding a new area of endeavor?

"A Yes."

Over to page 47.

"Q Did he" -- speaking of Mr.Vanderbilt -- "tell you anything about the financial condition of the company at that time?

"A No."

Page 50.

"Q I would like you to relate to me what those gentlemen told you about the financial affairs of Blair, as best you can recollect it during that time frame."

MR. BROOKS: Could we agree that "that time frame is when he first subordinated in May or June?

MR. FRIED: We don't have to agree. There was no answer. I am sorry. There was no answer.

Page 52.

"Q Did you have any discussions with Mr.Vanderbilt concerning the terms of the first subordination?

A In generalities, yes.

Q Please tell me what was said between you."

MR. BROOKS: Objection, your Honor.

THE COURT: I think it says first "I don't recall," doesn't it?

You are reading the second question? And you are objecting to the question Mr. Fried is now reading?

MR. BROOKS: Yes. "Please tell me what was said between you."

THE COURT: Sustained.

MR. FRIED: May I point out that this is Mr. Nelson conducting the examination, not anybody of the plaintiff.

THE COURT: I don't think that is --

MR. BROOKS: I believe it is Mr.Weiss.

THE COURT: Yes. I think it probably was Mr. Weiss. But I don't think that the rules are affected by who is asking the questions.

MR. FRIED: Page 81.

"Q Who did you discuss that with in February?

"A Well, I think any time you say discuss something Mr.Vanderbilt, Mr. Ramsey, Mr. Richardson, Mr. Rush, Mr. Hepburn were all there.

"Q Did any of those individuals report to you, at any time after you became a director, any request

made of Blair by the New York Stock Exchange concerning the net capital condition?

"A Yes.

"Q When was the first such communication?

"A I cannot tell you for sure. The one that stands out in my mind was Mr.Stock's letter in February."

I have nothing more except to point out that the letter that he refers to, Mr.Stock's letter, is in evidence as 19H.

THE COURT: That is right.

MR. FRIED: From Mr.Stock to Mr. Ramsey. It says in that letter, "We will have no alternative but to impose restrictions designed to curb the volume," and so forth.

It is already in evidence.

That is all.

THE COURT: Thank you.

I believe we have one evidentiary point that you raised about a report.

MR. TURETSKY: Yes, your Honor.

THE COURT: But unless you have other witnesses I would prefer to let the jury go at this time.

MR. FRIED: There are no other witnesses, your Honor.

THE COURT: All right.

We will be involved with motions this afternoon, is that right?

MR. FRIED: That is correct.

THE COURT: Ladies and gentlemen, you are then excused because, subject to some technicalities perhaps, as I understand it, the plaintiffs are about to rest their case, that is, conclude their case in chief. And counsel and I will be pretty well tied up this afternoon with legal questions.

You are excused for the rest of the day, to return tomorrow, of course, at ten o'clock.

I do want to say that we will be sitting on Friday afternoon and, subject to my recognizance of how we are doing otherwise, we may yet still be sitting Saturday, although I hope we can avoid that. But certainly we will be sitting Friday afternoon.

I look forward to seeing you tomorrow. Thank you very much.

We will not be sitting Friday morning. I will be involved in some other matters.

(Jury left the courtroom.)

(continued on next page.)

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J.P. FOLEY & COMPANY, INC.

v. 71 Civ. 2987

NEW YORK STOCK EXCHANGE and
AMERICAN STOCK EXCHANGE

June 9, 1976
10:15 A.M.

Trial Resumed

(In open court - jury not present)

THE COURT: Gentlemen, I have considered the points that you all made so effectively yesterday, and to the extent necessary I have reviewed the evidence and reviewed my copious notes of what you did say.

My decision on the motion is as follows, and I will explain the reasons after I announce the decision.

The American Stock Exchange's motion to dismiss is granted.

The New York Stock Exchange's motion to dismiss as to the claim based on Rule 10b-5 and the claim based on rescission and Section 20(a) are granted and the American Stock Exchange's motion to dismiss as to Section 6 claim is denied.

MR. LOFLIN: Your Honor, you just said the American Stock Exchange motion on Section 6 was denied.

Is that what you meant?

THE COURT: No, I did not mean that.

The New York Stock Exchange's motion to dismiss on this claim is denied.

To avoid misunderstanding, if I did not make it clear in the first instance, the American Stock Exchange's motion to dismiss is granted in full.

Let me dispose of that matter first by saying that there is no dispute, I think, that the only evidence against the American Stock Exchange has to do with the testimony of Mr. Ramsey as to the so-called American Stock Exchange luncheon, not the January 16th Bankers Club luncheon, and the isolated contacts, or at least the ad hoc accidental contacts, between Mr. Ramsey and Mr. Saul on the commuter train.

It is not clear, of course, from Mr. Ramsey's testimony, as to whether or not at the luncheon, or even with Mr. Saul, there was ever a discussion of the precise details of the Blair situation, the conversion problems, the bookkeeping problems, the shrinkage of income, the capital impairment, or capital deficiency at least, with regard to the net capital requirements. But I think either way the matter is observed, the motion should be granted.

If we assume that Mr. Ramsey's testimony should be taken at face value, that is, that we should not go behind his non-recollections, then of course there is nothing that would charge the American Stock Exchange with knowledge of the details.

And, in the circumstance, since I have already indicated that I agree with the American Stock Exchange that without such knowledge itdischarged its Section 6 duties by the establishment of a rule which provided for supervision of dual members by the New York Stock Exchange, which rule was tacitly approved, at least, by the SEC by non-action over a period of years; having expressed my view that that theory is sound, then unless personal knowledge can be chargeable to the American Stock Exchange, no reasonable juror could come to the conclusion that the American Stock Exchange acted unreasonably.

If, however, we adopt what I consider a more realistic analysis of the testimony and infer that although Mr. Ramsey could not remember what happened on those occasions, by which I do not mean to suggest that Mr. Ramsey's failure to recollect or that of the many witnesses who have failed to recollect was necessarily deliberate or any indication of a lack of candor on their

part, it could very well have been a desire to forget traumatic experiences, in any event, if we go beyond Mr. Ramsey's testimony and infer that at a luncheon with the American Stock Exchange, during the heat of the events which existed at that time, it was more than natural, and to be assumed, that Mr. Ramsey brought the American Stock Exchange generally up to date on the problems, as he had done with the creditors of the company on January 16th and immediately thereafter with the New York Stock Exchange and the SEC, I nevertheless believe that a reasonable juror could not conclude that the American Stock Exchange had not acted reasonably in the circumstance because the American Stock Exchange had a right to assume, knowing as they would have as part of such an assumed message by Mr. Ramsey, that Ramsey and his colleagues had brought the New York Stock Exchange up to date and fully informed them on Blair's affairs, as he had done with the Securities and Exchange Commission, and the American Stock Exchange had the right to assume that the New York Stock Exchange would supervise Blair appropriately in the circumstances and that the net capital problem, which would have been the same for both Exchanges, would have been as well regulated by the New York Stock Exchange as by itself, as would the other problems that Blair faced.

Indeed, I must say I also agree with the American Stock Exchange's view, completely aside from whether dual supervision is excused as a matter of law, that as a matter of fact, if dual or multiple supervision of a brokerage house were attempted, particularly in the confused situation of Blair, it would have created chaos rather than have made a contribution to the welfare of the customers of Blair or the members of the firm or creditors or anyone else having a financial interest in the situation.

Some day I hope I may have the opportunity or the time to write the opinion that somebody should write on the major question that you have raised in your earlier motions, Mr. Loflin, but for the moment I think this is all you need and you and your colleagues are excused from further participation in the case.

It has been a pleasure to work with you, and I am sure Mr. Fried will agree with that.

MR. LOFLIN: Thank you, your Honor. I am sure I am speaking for Mr. Reid and myself in stating that it has been a great pleasure to be able to try this case before this Court.

As you know, months ago there were three cases that raised essentially the same legal theory and there has been no definitive judicial decision in this area.

Of course, I would welcome it from this Court at any time.

Thank you.

THE COURT: All right.

Now we come to the motion of the New York Stock Exchange. We start with the same premise, of course, as to the basis upon which a motion to dismiss should be granted, that is, whether a reasonable jury could decide in favor of the plaintiff.

I have concluded that under the law, and particularly under the tests established in the Hochfelder or Ernst case, decided by the Supreme Court on March 30th. That no jury could reasonably decide that the New York Stock Exchange was guilty of a violation of Section 10b of the Act.

My rationale is that in the first instance the Exchange owed no direct duty, as I see it, to Mr. Foley and could be held liable, if at all, only as an aider and abettor. But I don't believe that it is desirable or necessary to press the distinction because, whether as a principal or as an aider and abettor, it seems to me that the proof is totally inadequate to establish the requisite element of scienter as defined by the Court in Hochfelder.

There is absolutely no showing in the case that the Exchange intended to manipulate the situation in any way, as stressed in Hochfelder. There is not even, in my opinion, evidence which would establish the kind of recklessness which the Court implies, without deciding, in a footnote might possibly support a case under 10b-5.

Instead of finding that the Exchange was chargeable with total inaction, it seeems to me that although I do believe that their behavior, in the light of hindsight, could have been keyed up, nevertheless it seems to me that they kept on top of the situation in good faith. They did not fail to disclose to Mr. Foley anything whatsoever, because they made no disclosure to him. They had every right to assume that the firm itself would have disclosed to him all business facts normal to such a transaction and had even more right, it seems to me, to assume that Mr. Foley himself, in making so large an investment as $2.5 million in a firm which he admits he knew was having business troubles, when every person reading the newspapers and paying any attention to the affairs of the Stock Exchange at that time know that there were serious problems facing Stock Exchange firms, would have asked for. The necessary information.

I don't know that further elaboration as to

my own reasons for coming to this conclusion is necessary. I am satisfied that a reasonable jury could not reasonably decide in favor of the plaintiff on the 10b-5 claim because the necessary requisite of scienter as defined in Hochfelder is not present or has not been established.

(continued on next page.)

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Now, the situation is different as to Section 6. We aren't talking about questions of sienter there. As Mr. Reilly has pointed out yesterday, Section 6 is not a disclosure section; it is a supervision section. And, as both sides pointed out under Dempsey-Tegeler, it seems to me to be the rule that all cases arising under Section 6 must be decided on the facts of the particular case.

That doesn't mean that a Judge should never rule favorably on a defendant's motion to dismiss at the end of plaintiffs' case. It does suggest that precisely because the case is to be decided on its own factual complex it is more appropriate to leave that role to the jury than for the Judge himself to decide it.

But I am not evading responsibility in coming to this decision. I do believe that, although I, myself, might decide the case at this point favorably to the Exchange, a reasonable juror could decide that the Exchange hadn't acted reasonably with respect to the discharge of its obligations under Section 6.

For that reason the Exchange's motion as to that section is denied.

The claims with regard to rescission and under Section 20A are denied for the reasons set forth in the Stock Exchange's memorandum

at the early part of this trial.

All right, will you proceed --

MR. FRIED: Your Honor, I don't know if it is necessary to state on the record that I except to the rulings by your Honor. I think under the rules it is not required, but just in case somebody claims I have been derelict, I do take exception to the rulings of your Honor, particularly under 10b-5. But even under Hochfelder, with all due deference to your Honor, I say that the evidence is overwhelming that the Stock Exchange not only aided and abetted but participated in the very thing which brought about Mr. Foley's loss.

THE COURT: I understand you feel that way, Mr. Fried, and I have reviewed all my notes on your position, because I know how you felt and the burden was your opponent's.

I read Hochfelder last night, and I believe my conclusion is correct.

You stated at the end of your remarks yesterday that you thought Hochfelder didn't apply because in this case the Stock Exchange had information, and in Hochfelder, the firm of Ernst & Ernst didn't. I do not believe the distinction to be a valid one in the case that we are dealing with. I don't think Hochfelder turned exclusively or primarily on the fact that Ernst & Ernst didn't have

knowledge, but that they didn't have the requisite animus or purpose.

Now, not having knowledge would make it almost impossible to have animus or purpose, but having knowledge doesn't automatically establish animus.

All right, bring in the jury.

MR. BROOKS: Your Honor, there are some scheduling matters. There is an exhibit which I propose to use with one witness, which I would like to discuss with the Court and have counsel give his views on before it comes up.

THE COURT: All right.

MR. BROOKS: We do have some schedule problems with witnesses. One witness we intended to call is ill. One is out of town, and the other is a practicing lawyer with a very demanding schedule, so that --

THE COURT: Why don't you settle the case?

MR. BROOKS: We have one witness available that we would like to use to fill in any gap in time so that we do not waste the time of the Court and counsel and the jury, and then we may have to suspend with his testimony to take the other --

THE COURT: IN other words, you may have to interrupt his testimony, is that it?

* * *

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I will explain to you, of course, in considerable detail after the evidence is all in, but which deals with the question whether the New York Stock Exchange properly supervised the affairs of Blair and met its legal obligations as such. That is the sole issue before you to decide in the case.

Mr. Brooks?

MR. BROOKS: I call John Richardson.

J O H N B. R I C H A R D S O N, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BROOKS:

Q Mr. Richardson, will you summarize for the jury your education, starting with college?

A I am a graduate of Howard College, Birmingham, Alabama, and a graduate of Columbia Law School.

Q Are you a member of the Bar?

A Yes.

Q In what states are you admitted to practice as an attorney?

A New York.

Q Have you practiced as an attorney?

A 1014

A Yes, sir.

Q Would you tell us --

THE COURT: Could you speak a little louder? They cannot hear you in the jury box.

THE WITNESS: Yes, your Honor.

Q Will you tell us what your experience has been as a practicing attorney. In what capacities have you practiced and what dates and where have you done so?

MR. FRIED: Your Honor, Mr. Richardson is being called as a factual witness, not as as expert. I don't understand why these questions are advisable.

THE COURT: Well, he acted as an advisor on legal matters at the time of the events and since the reasonableness of the action of the defendants is an issue here, and I think appropriate for the jury to know what his background was, although obviously his background will not be controlling as to the reasonableness of the various acts.

So you may answer the question.

A I worked as an associate of the firm which is now Mudge, Rose, Guthrie & Alexander from 1950 to 1969.

MR. BROOKS: Can the jury hear the witness? Will you say that again?

A 1015

THE WITNESS: I was associate of the firm of Mudge, Rose, Guthrie & Alexander and the predecessor firms from 1950 to 1969. I worked in the corporate area, especially in various securities matters.

In 1969, in July, I became of course, in-house counsel to Blair & Company. I remained in that position until the firm ceased to do business.

MR. FRIED: Your Honor, Mr. Richardson has a tendency to drop his voice, and it is very difficult. I ask the Court to request Mr. Richardson to keep his voice up.

THE COURT: I have done so.

THE WITNESS: I am sorry. I will try to.

THE COURT: Lawyers seem to be shy when they get on the stand.

Q What were your duties after you became the house counsel at Blair & Company, and if they changed during your tenure there, tell us in what way they changed and how and when?

A Well, my position was designated as in-house counsel. An outside firm was retained as general counsel to the firm.

THE COURT: Is that your former firm?

THE WITNESS: Yes.

A 1016

A (Continuing) The firm of Blair & Company also had a number of lawyers in its Compliance Division. They were responsible primarily for matters of compliance with the Stock Exchange regulations and matters of that sort.

I generally supervised the other areas of the firm's business. I was available to consult with anybody in the firm who needed advice.

Q Did part of your duties include supervising or working on agreements with various investors in Blair, such as subordinated lenders and purchasers of voting and non-voting stock?

A Yes. Preparation of agreements of that nature became a part of my duties.

Q In the course of your work on such agreements, did you become familiar with the Stock Exchange rules governing the admission of new investors in Blair and the terms under which they could be admitted?

A Yes. I was generally familiar with the rules.

Q Do you recall when the conversion of Blair's computer accounting system occurred, when they converted from the ACS System to the Midwest Stock Exchange Service System?

A It was the early part of November, 1970 -- 1969. I don't recall the exact date. But the second week.

THE COURT: It did not all happen in one day, did it?

THE WITNESS: Well, there was a cut-over at one specific point, and that occurred on something like November the 8th.

THE COURT: In that neighborhood?

THE WITNESS: In that neighborhood.

Q What were the results of that conversion, Mr. Richardson?

A Well, the basic result was that all the Blair Division accounting records were switched off ACS on to the Midwest System, where the Schwabacher Division records already were, and additional deleterious effects on the firm's circumstances were that the conversion mechanically didn't go smoothly as had been hoped it would.

THE COURT: I do not know if you are trying to bring out Mr. Richardson's knowledge of these events, but we all know about it, of course.

MR. BROOKS: I am aware of that, your Honor.

THE COURT: I am sorry.

Q Mr. Richardson, would it be fair to say that

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the conversion didn't go smoothly and that there were a number of problems that resulted?

A Yes, sir.

Q When did these problems first come to the attention of the management of Blair?

A They first came to my attention about the end of 1970 -- 1969 -- I am sorry. The end of December.

Q The end of December.

Did Blair take any steps to cope with these problems at that time?

A Yes.

Q Would you tell me what steps they took, to your knowledge?

A One of the major steps that was taken was the retention of Arthur Young & Company to supervise a rather large staff of Arthur Young people, the actual Operations Department.

Q Arthur Young & Company were the auditors of Blair, were they not?

A They were independent auditors. A group who were not auditors themselves but were specialists in conversion of accounting systems came in and were retained and paid by Blair.

Q You said they came in with a number of people.

Can you be more specific as to how many?

A I can't recall precisely. There were about fifteen or twenty.

THE COURT: That is the range?

THE WITNESS: Yes, sir.

THE COURT: There were not a hundred, and there were more than three.

THE WITNESS: I didn't work with them. They were in the division separated from the executive offices. So I didn't observe them.

Q Did the Midwest Stock Exchange Service Corporation provide any personnel on the premises of Blair to cope with the problems resulting from the conversion?

A Yes. They assigned a large number -- and again, I'm not certain of the precise number -- additional number of people, because the Midwest Exchange business wasn't as prolific as they would have liked for it to be at that point, and they had some extra personnel on the payroll, which they said they would be very happy to assign to Blair to make certain that the conversion went smoothly.

MR. FRIED: May I have the answer?

(Answer read)

A To complete the answer, these Midwest experts

A 1020

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remained on the premises full-time for a number of months. I have forgotten the exact dates.

Q Can you give us an approximation of how many additional representatives came from the Midwest to Blair's premises?

A I think the number varied from week to week. Probably about -- to the best of my recollection, it might have been ten or twelve.

Q Before the problems were identified or at least before it became known that you did have problems, did the Midwest Service Corporation have employees on premises just in the ordinary course to assist with the conversion, before the problems were located --

A The additional force, the task force that I was speaking about of Midwest personnel was there from the beginning of the conversion, from a few days prior to it.

Q Did more people from Midwest come when it became clear that there were problems?

A I don't recall. There were a great many Midwest people on the premises throughout the entire period.

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Q Aside from Midwest people, and aside from the Arthur Young people you have identified, were there any employees or consultants that were employed by Blair to assist it in coping with the problems that developed from the conversion?

A I don't recall any other outside people.

Q Are you familiar with a George Morpurgo?

A Yes.

Q When did Mr. Morpurgo first become associated with Blair & Company?

A I think he became officially employed about April 1, 1970.

Q Did he act as a consultant --

A I have to amend my answer to the previous question.

I think Mr. Morpurgo is a member of the Blair staff, because he was an officer for quite a long time.

At the time of the conversion he was an officer of a company called Intelicon, and prior to that he had been an officer of the Westwest Stock Exchange Service Corporation.

THE COURT: Mr. Brooks, is your question about when Mr. Morpurgo first became associated with Blair intended to mean paid by them in some respect or simply

A 1022

helping them with their problems.

Q Let me put it in the way the Judge suggests, Mr. Richardson.

When did Mr. Morpurgo first come to Blair to give hlep with the computer conversion?

A To the best of my recollection, it was probably in February 1970.

Q And when he came, was he recognized by Blair as an expert on this kind of conversion and the problems that were resulting?

A Yes.

Q Did Mr. Morpurgo come with or retain after arriving assistants to help him work on the problems resulting from the conversion?

A I'm not certain that he retained any one specifically for that purpose. He worked with some of the people who had previously been with him in Intelicon. Mr. Coelho, for one, who was there helping with the conversion.

Q Did Mr. Morpurgo have a recognized group at Blair which worked on conversion problems under his direction?

A I don't believe so. He was primarily an outside consultant. He was looked to for basic suggestions

A 1023

about approaching how to proceed.

Q If I understand your testimkony, there did come a time when Mr. Morpurgo was retained as a permanent employee and made an officer of Blair, is that correct?

A Yes.

Q When did that occur?

A To the best of my recollection it was about April 1, 1970.

Q What office was he then appointed to?

A He was appointed to the office of executive vice-president.

Q What were his duties as such?

A Well, he was given responsibility for and supervision of the Operations Department and certain other areas. The Compliance Department was put under his jurisdiction.

Q Would I be correct --

A Essentially everything except the Sales Department was under Mr. Morpurgo's zone of responsibility.

Q Who had jurisdiction of the Sales Department?

A Mr. William Grosscruger.

Q Would I be right in saying that after Mr. Morpurgo became the executive vice-president that he was the number two ranking operating officer of Blair &

A 1024

Company under Mr. Ramsey?

A Yes, sir, I believe so.

Q Mr. Ramsey has testified about a meeting held at the Bankers Club.

MR. FRIED: I am going to object to this form of question. And if it is going to continue, I don't want to get up constantly.

THE COURT: Sustained.

Q Mr. Richardson, did you attend a meeting at the Bankers Club in January of 1970 in connection with Blair matters?

A Yes, sir.

Q Would you tell us what your best recollection is of the date of that meeting?

A It is about the middle of January, I'd say, approximately the 15th.

Q Who called that meeting?

A Mr. Ramsey.

Q For what purpose, if you know?

A For the purpose of advising some of the principal outside investors in Blair that there was a substantial possibility that there was a capital deficiency resulting from problems created by the conversion, primarily, and to request indications of willingness to invest, make

A 1025

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additional investments or additional subordinated loans to Blair if it turned out, when reliable figures became available, that the firm needed additional capital.

MR. FRIED: Your Honor, he dropped his voice. When?

THE COURT: Will you read it, please.

(Answer read)

Q Mr. Richardson, I show you a document that has been marked as Defendants' Exhibit DDD in evidence at this trial and has been identified as a secured note and collateral agreement signed by Melville H. Ireland on June 1, 1969.

I ask you to look at that and tell me whether, in the course of your employment at Blair and your work on the agreements of investors in Blair you saw this document.

A Yes, I believe I saw this.

Q Are you familiar with the name Melville Ireland?

A Yes.

Q Have you met Mr. Ireland?

A Yes.

Q Now, is this an agreement, Exhibit DDD, and the note in a form which was the standard form at Blair & Company for such investments?

A It appears to be.

Q This agreement is dated June 1, 1969 and the note is in the amount of $1,008,000.

Do you know whether Mr. Ireland made any --

A Excuse me. It looks like $1,008,000. Is that what you said?

Q I should have said $1,008,000.

A I thought you said one million eight hundred.

Q $1,008,000. It is dated June 1, 1969.

You arrived at Blair in July of 1969 to take up your duties as house counsel.

Did you become aware of an additional contribution to capital by Mr. Ireland after you arrived at Blair, in July of 1969?

A Yes.

Q When was the first additional contribution of capital by Mr. Ireland that you became aware of ?

A To the best of my recollection, there was an additional contribution sometime in August of 1969.

Q How was that effected?

A I was not directly involved in the handling of that transaction. I learned about it only sometime after it happened.

Apparently it was handled by the adding of the

additional collateral to this particular agreement.

MR. FRIED: I move to strike out everything after "Apparently," your Honor. The witness doesn't know. I don't think he ought to speculate.

THE COURT: Is that an assumption on your part, Mr. Richardson, or do you have personal knowledge of that?

THE WITNESS: I have some information on which to base that statement.

By a process of elimination I can tell you that it was not handled by the execution of a new agreement with respect to that second pledging of collateral.

Q Was additional collateral pledged by Mr. Ireland in and about August of 1969?

A Yes.

Q Do you recall the amount of the additional collateral?

A Speaking very generally, I think about $2 million, something in excess of two million.

THE COURT: Is that market value?

THE WITNESS: Market value, yes.

THE COURT: That is before the haircut.

THE WITNESS: Yes.

Q Under the standard form of note and collateral

agreement, such as you had said Exhibit DDD is, if additional collateral is contributed by an already existing secured demand noteholder, what effect does that collateral have on the amount of the original note?

A Under the provisions of the agreement, the amount of the note is automatically increased to the current market value of the collateral.

Q So that if Mr. Ireland put in an additional $2 million in August, by the provisions of Exhibit DDD the note then became approximately $4 million, because he contributed an extra three and we have got one here already?

A I said that I thought it was something in excess of two million.

Q If he contributed two and we have one, now he has an obligation for approximately three, under the same agreement that he executed in June, Exhibit DDD.

A Yes.

Q Can you point out to us the passage in Exhibit DDD which so provides, Mr. Richardson?

THE COURT: Is that in evidence, Mr. Brooks?

MR. BROOKS: DDD is in evidence, your Honor, yes.

THE COURT: You might save a little time if

you call it Triple D.

MR. BROOKS: I'm worried when I get to Triple X.

THE COURT: If you know where it is, why don't you suggest it.

THE WITNESS: I haven't examined this in quite some time.

Q Try taking a loot at Paragraph VI-B.

A Yes. If you read that together with the definition of collateral up in Section II, I think you reach the conclusion that the additional collateral in the account would automatically increase the amount of the note.

Q Were you familiar with the standard time period for an investment such as Mr. Ireland made through Exhibit DDD?

A At about that time, yes. Six months was the standard minimum time that the investment had to remain in the firm before it could be withdrawn.

Q And is that provision found in Paragraph V-A of Exhibit DDD?

A Yes. The six month period would begin to run from the time that the request for withdrawal was made by the contributor.

A 1030

Q Am I right in understanding that provision that an investor in Blair first had to make a demand, say he wanted his money back, and then he had to wait six months before he could get it back?

A Yes.

Q And that was the normal provision?

A Yes.

Q Mr. Richardson, I show you now Defendant's Exhibit EEE in evidence, which has been identified as Mr. Ireland's second such collateral and secured demand note agreement. Are you familiar with Exhibit EEE?

A Yes, sir, I am.

Q Can you tell the jury the circumstances under which Exhibit EEE was prepared and signed and the contribution made by Mr. Ireland under it?

First of all, let me point out that EEE is dated February 27, 1970.

A Some time in the month of February 1970 it became likely, from the in-house figures available, that the firm was in need of a substantial amount of capital in order to remain in capital gains, and Mr. Ireland and Mr.Vanderbilt, who was the Chairman of the Board of Blair, each agreed that they would make an additional investment on a short term basis, or until some further permanent capital could be obtained, of $2 million each.

And this represented Mr. Ireland's contribution under that plan.

Q You said that this was to be short term capital. Do you recall the amount?

A The amount was about $2 million.

Q And Mr. Ireland did actually contribute the

$2 million in February, did he not?

A He made a secured demand note loan in that amount.

Q You said it was short term. Would you look at paragraph 5 of Exhibit EEE?

A Yes.

Q And tell me what the term is there and how it would work if Mr. Ireland wanted to get this money out that he put in in February?

A Paragraph 5 provides that Mr. Ireland could withdraw his securities at any time after 60 days from the date of the note, which was the date of the contribution That was a substant ial shortening of the normal period.

Q As I read paragraph 5, he would first have to make a demand for that money back, would he not? He would have to wait 60 days and then demand his money?

A No, sir. This works the other way. He had the right to receive it upon demand at any time after 60 days.

Q Right. But he would have to ask for it.

A Yes.

Q You wouldn't send it back automatically at the end of 60 days without asking to have it back?

A It would remain as capital until he had asked

for its return.

Q When did you leave Blair, Mr. Richardson?

A When did I cease to be employed by them?

Q Yes.

A At the end of 1972.

Q Prior to Blair's liquidation or bankruptcy or whatever we call its demise, did Mr. Ireland demand the money back that was covered by this agreement, Exhibit EEE?

A I am not certain that he made a demand for it. My recollection is not clear on that.

Q Do you recall whether this money covered by EEE was used to pay the creditors of Blair? In other words, did it go down with the ship or did Mr. Ireland get it back?

A I believe it went down with the ship.

Q Now, did you or any other officer or employee of Blair have to obtain any special approval from the Stock Exchange for this 60-day withdrawal provision covered in Exhibit EEE, paragraph 5?

A Yes, sir. That was necessary before this could be treated as capital.

Q Why was that necessary?

A Well, the Exchange's rules required either a 90-day or a six months' minimum time for investment for

any securities loans. Since this was shorter, the approval of the Exchange would have to be obtained before the investment could be treated.

Q Was that approval obtained?

A Yes.

Q We have spoken of an initial contribution by Mr. Ireland in June of approximately a million dollars and then a $2 million plus contribution in August, and another $2 million in February.

To your knowledge, did he have any other money invested in Blair & Company?

A In September 1969, September or October, I am not certain which, he purchased a subordinated debenture, I believe inthe principal amount of $200,000. That was a cash purchase.

Q Wasn't he a director of Blair & Company?

A May I finish that?

Q I am sorry.

A In addition to that, he had purchased some preferred stock and some common stock. He was an equity holder as well.

Q How much was the amount of the debenture he purchased in September?

A JUROR: Your Honor, we couldn't hear.

THE COURT: Would you read back the last answer, please.

And, Mr. Richardson, you will have to help us out.

THE WITNESS: I will try, your Honor.

MR. BROOKS: Your Honor, would it assist if we interrogated from the side on which the jury is on?

THE COURT: Maybe it would. I am willing to try it.

Q Would you be willing to walk over there, Mr. Richardson?

A Certainly.

THE COURT: Go ahead, Mr. Brooks.

BY MR. BROOKS:

Q How much was that debenture, Mr. Ireland, purchased in September?

A Approximately $200,000.

Q And you mentioned some preferred stock, I believe, that he purchased. How much was that? How much did it cost?

A I don't recall the exact amount of the stock purchase.

Q Was Mr. Ireland a director?

A A rather substant ial amount.

Q Was he a director in February when he put in the $2 million?

A Yes.

Q Did there come a time when you met Mr. John Foley?

A Yes.

Q When did that time come?

A In February 1970.

Q And would you tell the jury the circumstances under which you met Mr. Foley?

A I met Mr. Foley in his office on 42nd Street at a meeting attended by Mr. Foley and Mr. Dudley Luce and Mr. James Rush of Blair & Co. Mr. Leonard Feldman was Mr. Foley's counsel.

THE COURT: Who was Mr. Luce?

THE WITNESS: He was the gentleman who introduced Mr. Foley to Mr. Rush.

THE COURT: All right.

Q Where was Mr. Luce employed at the time of this meeting, if you know?

A To the best of my information, he was employed at Hayden Stone, another member firm.

Q Under what circumstances had this meeting been called? Why did you all assemble in Mr. Foley's office

on that day in February?

A To the best of my information, there had been some previous meetings, at least one and possibly more, between Mr. Rush and Mr. Foley and his representatives and Mr. Luce, for the purpose of discussing a possible --

MR. FRIED: I move to strike that out.

THE COURT: Sustained.

Anyway, there had been an earlier meeting, right?

Q Did you have an understanding --

A Excuse me. I might add that my room was across the hall from Mr. Rush's and I had seen these people in conferences and I had been told immediately after the meetin what they talked about.

THE COURT: Possibly so. But, even so, you weren't present at the meeting?

THE WITNESS: No, sir.

Q And what did you understand the purpose of the meeting at Mr. Foley's office which you attended to be?

THE COURT: Before he arrived, you mean?

Q Why did you understand you and Mr. Rush were going to Mr. Foley's office on that day?

A The purpose of our visit there was to have a discussion about the potential secured demand note loan by

Mr. Foley to Blair.

Q Had you understood that Mr. Foley was contemplating making an investment in Blair?

A So I was informed.

Q Did you have an understanding of what amount was being discussed as his investment?

A I was told that the amount was approximately $4 million.

Q Can you tell us as best you recall who said what to whom at the meeting that you attended in Mr. Foley's office?

A There was a lot of general discussion about the affairs of Blair, especially in regard to the problems of the accounting system. I believe there was some discussio about the earnings in the recent month, possibly for the month of -- for the year 1969.

THE COURT: You mean a discussion as to what the earnings were or what their trend was, or what?

THE WITNESS: I believe that we had at that meeting copies of the published auditors' report for the fis cal year -- no, it wasn't for the fiscal year. It was the balance sheet as of September 26, 1969. I believe there was some discussion of that in general and possibly of some specific items.

Q At the time of this meeting, did you have final

earings reports for the year 1969?

A I don't believe there was anything of a final nature. There would have been unaudited figures. They would have been in-house figures. There were some tentative figures, but they werenot believed to be terribly reliable because of the condition of the records.

Q When you said before that you discussed with Mr. Foley theproblems of the accounting system, could you be more specific? Tell us what you meant by that?

A I was under the impression that, based on my conversations with these people --

MR. FRIED: I move to strike that out. These mental operations are not important to --

THE COURT: I think what Mr. Brooks is asking you is what was actually said about the problems, the substance of it.

THE WITNESS: My recollection is terribly vague in regard to the precise statements that were made.

Q When you said the problems of the accounting system, did you mean to refer to the conversion problems?

A The problems resulting from the conversion, yes.

Q WAs Mr. Foley told at that meeting, either by you or by Mr. Rush, that the records were unreliable?

A I am not certain. He wasn't told by me, because I did very little talking at the meeting. Essentially I was an observer at that meeting.

(continued on next page.)

nd 3B

Q Do you recall anything else having been said by any of the participants in that meeting, at the meeting?

A There was some discussion of the cushion of subordinated debt and other capital Dr. Foley wished to have pro ded for his investment. That came up at that meeting, I believe.

Q Who put that topic on the table? Who proposed discussing that or including it as a term of the agreement?

A I don't remember precisely.

Q Did Mr.Feldman, Mr. Foley's attorney, say anything at this meeting?

A Mr. Feldman had gotten held up and was unable to get to the meeting until shortly before the meeting was over.

Q Did he say anything?

A He had very little to say at that meeting.

Q Have you told us all you recall about this first meeting, at which you met Mr. Foley?

A Yes, all that I recall precisely.

Q When Mr. Feldman wasn't there, did Mr. Foley carry on the negotiations for his side of the meeting?

A Yes. He was the only person there on his own behalf other than Mr. Luce, who was Mr. Foley's friend and

representative.

Q When was the next time that you met either Mr. Foley or Mr.Feldman?

A There was another meeting in Dr. Foley's office some time later in the month of February, I believe.

Q Who attended that, if you can recall?

A Well, for Blair, Mr. Rush attended. I think Mr. Luce was again present. Dr. William Haberle, who was executive vice-president of Capital Management Corporation, a corporate affiliate of Blair, was there.

Q Was Mr. Feldman present?

A Mr. Feldman was there.

THE COURT: And of course Dr. Foley.

THE WITNESS: Dr. Foley.

Q Would you tell us as best you can recall who said what, to whom?

A The principal discussion at that meeting related to Capital Management Corporation, and the desirabili of Dr. Foley having options to purchase stock of Capital Management Corporation in addition to options to purchase stock of Blair & Company.

Q Do you recall anything else that was discussed?

A Nothing specific. I am sure there was other conversation, but I don't recall specifically.

Q Did you meet again with Mr. Feldman or Dr. Foley?

A I ~~had several~~ meetings with Mr. Feldman after that date. I don't believe I met with Dr. Foley until the closing date, April 3.

Q The closing date was April 3.

Will you tell us about the meetings that you had with Mr. Feldman at which Mr. Foley wasn't present?

A I met with Mr. Feldman three, four or five times, at the Blair Company offices each time.

Q What went on at those meetings?

A The drafting and perfecting the agreements to be used to complete the transaction.

Q You and Mr. Feldman were doing lawyer's type work?

A Along with Mr. Segal.

Q Who was Mr. Segal?

A Mr.Segal was a partner of Mudge, Rose, who was assigned to work on this matt er.

Q Did Mr. Rush attend any of these meetings with Mr. Feldman?

A Mr. Rush was a participant part of the time, at some of the meetings. He didn't attend all of them.

Q Before you started this series of meetings

with Mr. Feldman and Mr. Segal, had there been a decision made to make an investment in Blair by Dr. Foley?

MR. FRIED: I object to that, your Honor. He can't testify to the mental operaiton of Dr.Foley.

THE COURT: He can testify whether Mr.Foley had communicated that to him or whether Mr. Feldman had.

A I was instructed by Mr. Rush to proceed with drafting the necessary agreements, that is the extent of my knowledge, my knowledge of the decision.

Q Let me show you, Mr. Richardson, Plaintiffs' Exhibit 9 in evidence, which has been identified as the collateral agreement signed by Dr. Foley on April 3, and ask you if that is the final -- if that is one of the final products of the drafting efforts that you and Mr. Feldman and Mr.Segal were doing about March of 1970?

A Yes, sir. It appears to be -- it looks to me as if it is a conformed copy of the final agreement.

Q It is a conformed copy.

MR. BROOKS: I have used that because the original copy reproduced so faintly that it couldn't be picked up in duplicating.

Q Let me show you a document that I have marked as Defendant's Exhibit FFF for identification, and ask you if you could identify that document for us.

A This is a schedule of the subordinated liabilities of Blair & Co. at February 28, 1970.

MR. BROOKS: Now I offer FFF for identification in evidence, your Honor.

MR. FRIEDMAN: I don't know what the foundation is, your Honor. If Mr.Brooks will tell me the purpose of the offer, I may be able to avoid having him lay a founda tion.

THE COURT: Well, he doesn't need more of a foundation to say what it was, but that doesn't make it admissible.

MR. FRIED: That is right.

THE COURT: I don't see how it can do any harm. If it turns out to be pernicious, we can strike it later.

MR. FRIED: Well, whenever I don't know, your Honor, I am a little concerned.

THE COURT: We won't let the jury see it yet. Subject to those reservations, it is admitted.

MR. BROOKS: It is admitted now, your Honor?

THE COURT: Yes.

xxx (Defendant's Exhibit FFF for identification was received in evidence.)

Q Mr. Richardson, I call to your attention page 3 of the collateral agreement which is entitled "Other

withdrawal rights" and has a series of definitions on it that being with A-1, which says, "Original capital shall mean the sum of $21,750,000."

Do you see that?

A Yes.

Q Page 3, paragraph B-A-1 of the collateral agreement.

I take it that term of the collateral agreement was negotiated with Mr. Feldman during your discussions with him, is that correct?

A Yes. It was arrived at during discussions with him.

Q And in arriving at it, did you consult Defendant's Exhibit FFF?

A Yes.

MR. BROOKS: I take it that that connects up FFF.

THE COURT: Well, explain to us how it does. Just looking at the paper doesn't make your point.

MR. BROOKS: I was going to do that.

THE COURT: Go ahead.

MR. BROOKS: AT this time, your Honor, I would like to present to the witness and make available to the jury Exhibit GGG for identification, which is the schedule

that we discussed.

THE COURT: All right.

Ladies and gentlemen, let me explain to you that Mr. Brooks is going to give to each of you a copy of the schedule here, which will be used as a guide in Mr. Richardson's testimony. The schedule itself has no evidentiary value except to the extent that you find it supported by credibility statements -- that is, statements which you believe -- made by Mr. Richardson.

MR. FRIED: May the jury be instructed that this wasn't given to Dr. Foley, and was never purported to have been given to Dr. Foley?

THE COURT: Yes. It was something which didn't exist at t he time of the negotiations. It has been prepared for the purpose of illustrating the testimony of the witness.

(Pause.)

Q Mr. Richardson, can youtell us what role Exhibit FFF, the schedule of subordinated liabilities, played in your getting to the figure defined as "original capital" of $21,750,000 in the collateral agreement, which is Exhibit 9?

A Exhibit FFF lists all of the subordinated liabilities of Blair at February 28, 1970, and the total

of those subordinated liabilities was a major component of the figure which was designated -- defined as original capital.

THE COURT: Where is that total to be found on FFF?

MR. BROOKS: It is not there, your Honor. You have to compute various totals on FFF.

Q Mr. Richardson, do you recall the total that you get when you add up the various categories on FFF?

A If you ask me for an instantaneous answer I would say approximately $26 million. It might come out somewhat more or less than that. There are only a few figures --

THE COURT: I notice the figure on page 5, I guess it is, at the bottom or near the bottom --

THE WITNESS: We have subordinated securities of $21 million plus subordinated debentures of $2,581,000, which is $23,500,000.

Q Mr. Richardson, would it help your recollection and spare us some mathematics if I told you that in the deposition which you gave on October 31, 1973 --

THE COURT: Mr. Fried apparently objects to your doing it this way. Why don't you just present Mr. Richardson his testimony on deposition and see if it re-

freshes his recollection.

I take it you have no objection to that.

MR. FRIED: What page.

Q Would you read from the bottom of page 88 over to the top of page 89 and tell me if your recollection is now refreshed to the computation that you have testified about?

A The computationtotal is $25,848,743.74.

THE COURT: Is your recollection refreshed?

THE WITNESS: Yes.

Q Would you read that again?

A $25,848,743.74.

Q And I believe that is the first figure that you find on Exhibit GGG, the schedule that we all have?

A There is a discrepancy of one dollar. This is more likely correct than the other.

Q Well, giving you the benefit of it, Mr. Richardson, I will admit to that one dollar error, but aside form that, I take it that the figure is approximately the same?

A Yes.

Q Now, would you tell us how you got from the total FFF of $25,848,843.74 to the figure shown as original capital in the collateral agreement of $21,750,000.

I take it this was done in your negotiations with Mr. Feldman, is that correct?

A Yes.

Q Would you tell us how you got from the $25 million figure to the $21 million figure of original capital?

A Our objective was to compute a figure which would include not only the subordinated liabilities but also the equity of the firm. The total of that would be considered to be the capital of the firm at February 28, 19 --

THE COURT: That means, does it not, Mr. Richards investments by stockholders of the firm?

THE WITNESS: Well, it means investments, including any surplus, earned or capital surplus. It is the worth of the firm, in effect, on a book basis.

THE COURT: Which consists of what the stockholders have put in and any surplus that has been earned over the years, is that right?

THE WITNESS: It might exist in some cases of appreciation of assets still owned.

THE COURT: All right. That is so the jury may understand what we are discussing.

A Now, since our last audited figure as to net worth as of September 26, 1969, which is the date of the

Arthur Young report --

Q Let me stop you right there, Mr. Richardson, and show you Exhibit 2 in evidence, and ask you if you are familiar with that as a product of the Arthur Young report, which we have just referred to.

A Yes. This is what I was referring to. It became necessary to make adjustments for any known or recen tly expected changes in the exposition of the firm, since the date of that balance sheet, February -- in September.

THE COURT: That balance sheet showed a surplus of 464 and so on?

THE WITNESS: It showed an exposition of 460 --

THE COURT: The second figure on GGG.

THE WITNESS: Yes.

THE COURT: I take it that is on Plaintiffs' Exhibit 2.

THE WITNESS: It was necessary to make adjustments for the profit and loss, either additions for profits or deductions for losses that occurred during that four or five month period.

Q Betw-en September 26, the date of Exhibit 2, and this February 28 date that you had picked --

A That was the four months involved.

Q And what did you estimate those losses to be between September 26 and February 28?

A It was estimated that the losses, the combined losses for the months of October and November were approximately one and a half million dollars.

Q What about the first two months of 1970?

A In eachof January and February, 1970, a $1 million loss was estimated.

Q That is a total of two?

A A total of two, making a total of two. A total of $3.5 million estimated losses for the four months.

Q And was this information --

THE COURT: It is five months, isn't it?

THE WITNESS: October, November and Decemb er, January, February and March -- that's right.

Q When you say estimated, Mr. Richardson, I take it you didn't have accurate, hard figures available?

A We had no hard figures at all for the month of February except as Mr. Rush had some on an extremely informal basis. We were doing this at the end of February. It was really an educated guess on Mr. Rush's part. He was the principal financial officer, the treasurer.

Q Were these estimates that you have told us about, the $2 million loss in the first two months of 1970 and the $1.5 million loss for the other months, were these estimates given to Mr. Feldman at these meetings?

A Yes. We went through this computation in detail.

(continued on next page.)

4A

Q Now, do you see on Exhibit GGG entries to reflect the losses that you have just advised us you discussed with Mr. Feldman?

A Yes. There is a deduction of a total of three and a half million dollars for these estimated losses for operations during that period of time.

Q $1,500,000 for the remainder of '69, and then --

A Two million --

Q Two million in the right-hand column?

A Yes.

Q For 1970 losses, up through February 28th, estimated?

A Yes.

Q Well, did you add anything in on the plus side of the ledger?

A Yes. At the time of the audit, Arthur Young had made a write-off for some out of balance securities positions. I think the total was about $900,000, and a recovery team had been assigned, especially in the accounting department, to try to rectify those out of balance conditions, and as of this date they had, according to Mr. Rush, they had located about $500,000 of the differences which --

A 1055

Q Is that amount properly described on Exhibit GGG as recoveries of charged-off securities positions, estimated?

A Yes.

Q Now, let's back up just a bit.

You said that Arthur Young charged off approximately $900,000. Did you say of out of balance security positions?

A Yes. They made a direct charge to the surplus of the firm for the audited balance sheet. It was an amount larger than $500,000. If the recoveries of $500,000 were made prior to the audited date, the surplus would have been $500,000 larger.

Q Are we talking about short security differences, when you say out of balance securities positions?

A I suppose that's one way of referring to them.

Q Do I understand you correctly that Arthur Young made a subtraction from the amount of capital surplus in respect to short security differences or out of balance security positions?

A Yes. The stock records show that if customers and other brokers were owed 100,000 shares of XYZ stock, and they could only locate 90,000 shares, they would be

A 1056

mpjw 3 Richardson - direct

shot 10,000 shares and if a reasonable search was made and they couldn't be located, they would make a write-off against surplus for the market value of those shares.

Q Your testimony is that Arthur Young did make such a write-off as you best recall it, in the amount of $900,000.

A That's the best of my recollection. The figure could have been somewhat different from the --

Q And that write-off reduced the amount shown on Exhibit 2 as capital and surplus to the $462,000 amount that appears there to you?

A Yes.

Q And the reason why you added 500 back was that recovery efforts subsequent to the audit had found some of those securities or corrected the out of balance condition.

Was that explained to Mr. Feldman?

A Yes, it was.

Q Now, do you recall any other additions to the ledger that were accomplished during your construction of the original capital figure of $21,750,000?

A Blair & Company had several assets which were at the time of substantial value, but they were listed on the company's records at their more or less nominal

A 1057

cost, which didn't reflect anything like their true value, market value.

Q Can you tell us specifically --

A And they had not -- the accountants in making up the balance sheet had taken the company's book figures, as there were some stocks that were restricted and would require action to be taken possibly with the SEC before they could be sold. They were risks substanially more than they were carried on the books at.

Q Were these securities that were listed as assets at a nominal value?

A Yes. As I recall they were securities.

Q How did you factor those in?

A The largest item of that nature was the stock of Blair Advisory Company, which was a mutual fund advisory organization which handled the affairs of the Blair Company.

It was a publicly held mutual fund. It was a subsidiary wholly owned by Blair and it was carried on the books of Blair at a few thousand dollars, five or ten thousand dollars, which was the actual investment, but the going rate in the market at that time, based on sales of comparable companies at recent dates indicated that probably it could be sold for a million dollars, more or

A 1058

less.

Q What allowance did you make for those -- for the real value of those assets in your computations to arrive at original capital?

A We included $500,000 for all of the assets of that nature. We felt that that was a very conservative addition.

Q And is that entry shown on Exhibit GGG?

A Yes.

Q Now, was there any --

MR. BROOKS: Let me withdraw that.

Q Was that calculation, as you have described it, discussed with Mr. Feldman at these meetings that you had with him?

A Yes. It was gone through in detial, at more than one meeting.

Q Were there various drafts that you went through in arriving at the final draft in your work with Mr. Feldman?

A Yes, sir.

Q Do you recall how many drafts?

A You are referring only to the collateral agreement now or to various other documents involved?

Q Well, let's limit it to the --

A Assorted drafts.

Q Well, let's limit it to the collateral agreement which contains these formulae that we are talking about.

A To the best of my recollection, we had three or four drafts. Of course, we didn't redraft most of the document because a lot of it was boilerplate, and we redrafted various portions, especially this paragraph dealing with the withdrawal rights, which was revised more frequently than the rest.

Q Now, you mentioned that the February capital contribution of Mr. Ireland was only temporary, in that he could take it out after sixty days if he asked for it.

A Yes.

Q Was there any allowance made for that in your arrival at the figure of $21,750,000 of original capital?

A Yes. We deducted the entire amount of the -- of that latest secured demand note account of Mr. Ireland's, which was $2,904,000.

THE COURT: He had not made any demand for it, but you put in that provision?

THE WITNESS: This is dated February 20th. That contribution was made on the 27th. He had to wait

A 1060

at least sixty days before he had a right to --

Q Why did you deduct it, then, from the subordinated capital to arrive at original capital?

A Well, it was just for convenience in the future. I suppose it could have byen -- if we had not deducted it --

MR. FRIED: I move to strike out what could have been. It is speculation.

A There were all sorts of ways of handling it, and we elected to provide in the first place that no charge would be made against capital in future computations if that were withdrawn.

Q This is all for the purpose of Mr. Foley's withdrawal formula or cushion, as it is sometimes called; is that correct?

A Yes.

Q This figure of original capita, which you were working to arrive at, is to put that figure in Mr. Foley's formula, is that not it?

A Yes.

THE COURT: May I ask a question -- I do not know whether I should ask Mr. Richardson or Mr. Brooks.

In looking at GGG, to understand it, I understand all of the figures that you have referred to, but

A 1061

I don't understand how the figures in the left-hand column are taken into consideration in reaching the bottom line figure or where they are in the left-hand column rather than in the right-hand column?

MR. BROOKS: I will try to explain it and Mr. Richardson can correct me when and if I go wrong.

THE COURT: Who prepared this?

MR. BROOKS: I did, on the basis of Mr. Richardson's deposition testimony.

THE COURT: Do you have any objection to a straightforward explanation of that, Mr. Fried, or would you rather have it done through the witness? I mean, if it is just mathematical --

MR. FRIED: I don't think it matters. Mr. Brooks will ask the question and he is always testifying anyhow.

Q The top figure of $25,848,000 --

THE COURT: I understand that. Does every member of the jury understand, as I do, how each one of these figures was originally reached?

JURORS: Yes.

THE COURT: Will you tell us how the left-hand relates to the right hand.

MR. BROOKS: The top figure is subordinated

A 1062

capital, to that is added the figure for equity capital. There is then subtracted the figure for losses between September and December of '69. There is added back the plus recoveries to reflect those short stock record differences that were registered and recovered before February 28th.

THE COURT: Yes.

MR. BROOKS: There is added back a $500,000 figure to reflect the real value of assets that the auditors only took at book value.

THE COURT: Right.

MR. BROOKS: There is then subtracted the $2 million estimated operating loss for the combined months of January and February, 1970.

THE COURT: I will have to stop you there. I don't see how that all stacks up, because the figures in the right-hand column of 25,848, and so forth, if you merely subtract the two million in parenthesis, you reach the 25,848, and I do not see how you cannot have been given to the left-hand column of figures at that point. I don't know if that was intentional --

THE WITNESS: These figures net out to almost zero.

THE COURT: The $2 million figure --

THE WITNESS: There is a $34,000 discrepancy.

THE COURT: All right.

THE WITNESS: Because we felt there was plenty of reserve --

THE COURT: I am not saying it is important. I just wanted to understand. Otherwise it comes out to the penny.

MR. BROOKS: Let me pursue that with the witness.

Q Mr. Richardson, did you in your negotiations in calculating with Mr. Feldman, essentialiy net out the figures in the left-hand column to zero?

A Yes. We agreed that we would consider the equity position as being zero after September 30, 1969.

THE COURT: In other words, the zero in the right-hand column represents the fact that the figures in the other column nearly net each other out, is that right?

MR. BROOKS: Would it be helpful if the witness put a circle around those four figures and an arrow pointed to the zero.

THE COURT: I think the jury understands.

JURORS: Yes.

THE COURT: I don't think we need to do anything

more.

Q Was it explained to Mr. Feldman in the course ofyour meetings with him, working on these drafts, that the Ireland February contribution to capital of approximately $2 million was temporary and would -- and was surely susceptible to being withdrawn?

A Yes. The Ireland transaction was explained to Mr. Feldman, including the extra amounts involved.

Q And the fact that in FEbruary $2 million could be taken out after sixty days, if Mr. Ireland wished?

A Yes. It would have been impossible to arrive at these figures without discussing the Ireland sixty-day loan.

Q And the figure that you ultimately arrived at would have been the figure shown on Exhibit GGG of 21,743,942.49.

Did you then round that off to the figure shown in Exhibit 9, the collateral agreement?

A Yes, sir.

MR. BROOKS: Your Honor, on the basis of this testimony, I will offer Exhibit GGG in evidence.

THE COURT: I think it has already been admitted, subject to any reason to strike.

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MR. FRIED: Your Honor, as I understand it, while it may be marked in evidence it is only an illustrative exhibit.

THE COURT: Well, that's right. No matter what. Even if it is in evidence.

I have already explained to the jury that there is that reserve, but I suppose when you admit something in evidence it is material that the jury may look at in considering the case, and they may look at this, but it is only good insofar as they find that the figures are borne out by Mr. Richardson's testimony.

By that I do not mean to say that they find that or not, but for the purpose it is admitted.

(Defendants' Exhibit GGG for identification was received in evidence)

Q Mr. Richardson, what was the purpose of your work with Mr. Feldman to arrive at this artificial concept of original capital?

MR. FRIED: Your Honor, I object to the form of the question.

THE COURT: The word "artificial"?

MR. FRIED: "Artificial" and "purpose".

THE COURT: Artificial in the sense that it was unusual.

What was the purpose that you and Mr. Feldman had in coming to the formula of original capital?

THE WITNESS: If I might go back for just a few days in the negotiation period.

THE COURT: To when?

THE WITNESS: Two weeks before.

THE COURT: Well, if you could put it in terms of a month and date.

THE WITNESS: Maybe February 15th or thereabouts.

-- Mr. Rush had instructed me to set up the agreement onthe basis that if the subordinated -- subordinated capital of the firm were reduced by withdrawals to below $10 million, that would trigger Dr. Foley's right to withdraw his securities.

Q In other words, if the subordinated capital went below $10 million, Dr. Foley could getout?

A Yes. It was a very simple provision.

Q What happened to that provision?

A To the best of my recollection, our first draft included the provision in that form, and then I was informed, either by Mr. Rush or by Mr. Feldman directly that Dr. Foley wished a provision which would take into account not only withdrawals of capital directly by the

investors but also earnings losses of the firms that would reduce the equity position, and depreciation in the market value of securities that were used as capital. It was all lumped together.

THE COURT: Other losses; is that right?

THE WITNESS: Anything that would tend to make his investment less secure would be taken out in a way that would -- giving him even an earlier date than was given by the simple formula which was based solely on the withdrawal of subordinated capital.

Q Was the formula then as it was negotiated meant to preserve that roughly $10 million cushion for Mr. Foley and take account, both of withdrawals of other capital and losses of the firm?

A Well, I think the $10 million figure remaind in the background. I think we substituted for the basic amount of subordinated capital this figure of 21,750,000. I think before we had been talking generally in terms of $20 million.

So that if half of that were withdrawn it would leave ten million, and we drafted a set of provisions that were set up in this form, that was subsequently modified in various ways, but -- then we met with Mr. Feldman and went through the formulation and worked it

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out, in very close conference terms, and our product was submitted to Dr. Foley by Mr. Feldman for his consideration and approval.

Q As the formula was finally negotiated, Mr. Richardson, would it in simple terms be correct to say that if original capital is reduced by $10 million either in withdrawals or in losses, that Mr. Foley would have a right to get out?

A Yes. That was the first half of the withdrawal, basic withdrawal, provision.

Q Is there another half?

A Well, when the second half adds in, it makes a slightly different test, which includes use of the market value depreciation only if it exceeds, if the market value depreciation exceeded, 25 percent of the original capital.

Q And? Was there an "and" to that?

A And if the sum of the market value depreciation plus any reduction in the original capital figure as further adjusted by any withdrawals or additions of capital by investors was more than 50 percent of the original capital figure of 21,750.

THE COURT: Meaning 21,750,000?

THE WITNESS: Yes.

Q To simplify it again, if I may, Mr. Richardson, you correct me if I go astray, but is it fair to say that the formula meant to leave Mr. Foley roughly a $10 million

cushion after any loss or withdrawal was taken account of?

THE COURT: Or depreciation, I gather.

A Well, if you look at the figures included in this agreement, we start out with 21,750,000. But that was reduced by ten million to eleven million, 750. The original capital was reduced down --

MR. FRIED: Keep your voice up, please.

Q Keep your voice up, Mr. Richardson.

A If the original capital figure should turn out to be 11,750,000 or any amount below that, that would automatically trigger the right of withdrawal.

Q And however that original capital is eroded, whether it be by losses, by withdrawals of other subordinated investors or by depreciation of securities which make up that original capital, if that original capital went below that $11 million figure which you just said, then Mr. Foley had the right to withdraw, is that correct?

A Yes, with the slight addition of the fact that if the market value depreciated, it would only be taken into account if it amounted to 25 percent or more of the original capital figure.

Q I see.

A The amount of depreciation of securities would

have to be in excess of five million, five and a half million roughly, before it would be considered at all for the purpose of this formula.

Q And when it was considered, it plus those other possible losses had to bring the original capital down tothe $11 million figure that you gave us, is that correct?

A One-half -- down to one-half of the original capital.

Q One-half of $21,750,000?

A Almost 11 million.

Q Okay.

Did Mr. Feldman tell you, or did Mr. Foley tell you, in the course of the negotiations that their objective was to preserve that cushion of roughly ten or eleven million dollars?

MR. FRIED: I submit, the witness is being led constantly.

THE COURT: Sustained.

Q What, if anything, did Mr. Feldmar - Mr. Foley tell you was their objective in being able to withdraw when the original capital figure --

MR. FRIED: The same thing, your Honor.

THE COURT: There is a difference there. Of

course, in the light of your asking the first question, which I can't wipe out, there is a great deal of difference between asking what somebody said and saying did you say so and so.

I will allow the question now.

Q Do you have the question in mind?

A It is certainly possible that the capital of the firm would be reduced by --

THE COURT: Are you telling us what they t-ld you?

THE WITNESS: Yes. And the intention was that if Dr. Foley could be notified --

MR. FRIED: I move to strike out what the intention was. We are supposed to be getting the conversation.

THE COURT: This is a reproduction of the substance of the testimony? That is,"We wish to accomplish" or "We intend to do something", is that right?

THE WITNESS: Yes, sir.

THE COURT: Overruled.

A We were doing this for the benefit and at the request of Dr. Foley and his representative, his counsel.

THE COURT: That is vague. First of all, when you say that, what you just said, can you distinguish

between anything told you by Dr. Foley on the one hand and Mr. Feldman on the other or was it all by one?

THE WITNESS: I had no conversations directly with Dr. Foley other than in the two meetings that I attended in his office. All the other conversations --

THE COURT: Do you recall whether at those meetings he discussed the question of a cushion?

THE WITNESS: Yes, sir, it was adverted to, and I think the $10 million figure was mentioned.

BY MR. BROOKS:

Q Did Mr. Foley use the word "cushion"?

A Yes.

Q Did Mr. Feldman use the word "cushion"?

A You are pinning me down to an exact term. He used either that or the equivalent.

THE COURT: Like "pillow"?

Q And in connection with that term "cushion" or "pillow", did they attach roughly a $10 million figure?

A Yes. That was the background figure.

Q That came from their side of the negotiation, not yours.

A Yes.

I would like to add, your Honor, I believe that that figure was first told me by Mr. Rush in a

conversation between him and me.

THE COURT: The $10 million figure?

THE WITNESS: Yes, after he had discussions with the other side, which I was not a party to, in the early stages.

Q Subsequently, did either Mr. Feldman or Mr. Foley adopt that or speak as if it were their wish?

THE COURT: Mr. Brooks, I do not think you need drive this point home so far. The witness has said that he and Mr. Feldman negotiated this item for four separate meetings. I do not see how it can be anything but the objective of the plaintiff, and it does not seem to be seriously disputed.

MR. BROOKS: I think you are right, your Honor.

Q Was Mr. Segal present at all these meetings you had with Mr. FEldman to negotiate the draft?

A To the best of my recollection, he attended all the meetings at least part of the time. He might have shown up late for one or more meetings, but generally he was in attendance at the meetings.

Q At these meetings, up until the closing, including meetings that you attended with Mr. Foley and those that you attended with Mr. Feldman and those that you attended with both, what were they told about the conversion problems

that Blair was encountering?

MR. FRIED: I object to that unless he specifies what he told him.

THE COURT: No. If you were present, you may state anything you recall.

MR. BROOKS: Of course if he was present. I am only referring to meetings at which he was personally present, although not necessary the speaker; what they were told by anyone from Blair or Blair's attorneys about the conversion problem.

Q (Continuing)

Do you have my question in mind, Mr. Richardson?

A Yes.

Q What were they told by people from Blair about the conversion problems at meetings you were personally present at?

A They were told in substance that the conversion problems were continuing. There was never a detailed discussion of any specific conversion problems that I can recall.

Q Were they told that the conversion problems --

MR. FRIED: I object to counsel leading.

THE COURT: Sustained.

Q What were they told about the reliability of

of the figures that were available at Blair?

MR. FRIED: Your Honor, this is still suggestive.

THE COURT: Was anything mentioned with regard to reliability of figures?

THE WITNESS: In the computation of original capital, to be specific in one area, all of the figures that we were dealing with in terms of estimated profit and loss figures subsequent to the conversion date were spoken of in terms of figures that might not be reliable because of the condition that the accounting records were in.

There was one suspense account that kept jumping sometimes ten or fifteen million dollars per day.

THE COURT: You mean that was discussed?

THE WITNESS: Yes. It was discussed with Mr. Feldman. It was just part of the normla -- as I understand it, you get that in conversions of large firms.

Q What is a suspense account, Mr. Richardson?

A In this context, it would be a set of figures that would total up and there was a failure to balance and they would -- at the end of the day's records they

would throw that into something they had given a number and call it a suspense account, in order to balance the books for the day.

Q It is an artificial account?

A Yes.

Q Sort of a holding pen?

A Yes.

THE COURT: You were really flying behind at that time, weren't you?

THE WITNESS: That's right.

Q Was anything said to Mr. Feldman or Mr. Foley at meetings that you were at about losses of the firm, other than the numbers you have given us for the past, for the estimated losses up through February 28?

A I don't remember anything specific. There was mention of losses of the firm for the first part of '69.

Q Was anything said about the prospects in the future for losses or profits?

A I don't recall anything specific. There were no projections of any problems in the future.

THE COURT: Y ou did say, didn't you, that in preparing -- what do you call it? -- the original capital figure, that you made a projection of estimated losses for January and February?

THE WITNESS: We had already finished February at this point. This was the end of February.

THE COURT: So you are saying you didn't predict anything beyond that?

THE WITNESS: We had rough figures for January and we had rough figures -- actually the figures were coming in on a weekly basis. We roughly estimated figures for the month of February as well. So that was not a complete estimate.

Q Let me try to refresh your recollection about

the losses by reading to you from your deposition that you gave in Foley vs. Vanderbilt.

MR. FRIED: Your Honor, I object to this. He hasn't said he doesn't remember anything. He didn't say his recollection had to be refreshed and it is not an inconsistent statement.

THE COURT: Well, I see how this is going to go. Mr. Brooks is going to say, "Are you sure of that or do you recall?" And he is going to say, "I am not sure," and he is going to show him.

I would think the technique is better and fairer, however, especially when there is a jury involved, to show what it is you think might refresh his recollection and see if it does.

Then the jury won't know what it is unless he does recall it.

MR. FRIED: What page?

MR. BROOKS: 72. The question that I don't think he did recall was what was said about the future in respect to profits and losses.

Q I ask you to read beginning on line 13, page 72 of your deposition and see if that refreshes your recollection (handing).

THE COURT: If it does refresh your recollection,

just tell us that it does and then let's see what your recollection is independent of the transcript.

(Pause.)

THE WITNESS: I want to determine which meeting

MR. FRIED: Your Honor will see that he said he couldn't recollect and he couldn't remember anything specific. I don't think --

THE COURT: What page was that, Mr. Brooks?

Q Was it 72, Mr. Richardson?

A Page 72.

(Pause.)

THE COURT: I must say I am puzzled, because anything in the world can recall something to a witness or can be used to help him try to recall.

Q From a quick glance I am unable to determine which meeting we were discussing. I don't see anything on page 72 which is at variance with what I just testified to here.

THE COURT: All right.

Q Let me call your attention to lines 16 and 17, Mr. Richardson, on page 72. See if that refreshes your recollection about information given to Mr. Foley and Mr. Feldman about the future in respect to profits and losses. Does it, sir?

A Nothing that I can recall was said about the future.

Q Okay. Was any information given to Mr. Foley or Mr. Feldman in your presence about the capital condition -- by that I mean the net capital condition under Exchange Rule 325 -- of Blair & Co.?

A Certainly we discussed the matter more than once. They were told that the primary purpose of his making the investment was so that Blair could meet the capital requirements.

THE COURT: Can you say who was told, when they were told and who told whom what?

I take it that is a recital of a meeting or more than one meeting in which you were present, is that right?

THE WITNESS: Yes, sir, plus my inferences about --

THE COURT: No inferences, please.

THE WITNESS: Sorry. This is underlying the entire transaction.

THE COURT: The jury has to decide this on the basis of what events occurred. If you are drawing inferences, that is their job, not yours or mine. So will you please tell us just what statements were made?

Q If you can recall the particular meeting, tell us, Mr. Richardson. Or, if you cannot tell us the particular meeting, tell us that you recall that information having been given at some time and let us know as best you can what time it was given.

A Every meeting I attended with anybody on Mr. Foley's side, it was one of the basic facts --

MR. FRIED: It is very difficult to hear him.

A (continuing) -- under discussion throughout the meeting.

THE COURT: What was?

THE WITNESS: Blair was in desperate need of additional capital and Dr. Foley's investment would probably put Blair in capital compliance.

Q At that time, Mr. Richardson, how much was it expected that Mr. Foley would invest?

A Securities having a market value of approximately $4 million.

THE COURT: Was that figure mentioned by Dr. Foley or Mr. Feldman.

THE WITNESS: We were given a schedule of the securities.

THE COURT: I see. And you computed that they were worth roughly that?

THE WITNESS: Yes, sir.

Q Was a stock called Amicon included in what Dr. Foley planned to contribute?

A Yes.

Q Was Amicon ever actually received by Blair as capital that could be credited as such under Rule 325?

A No.

Q Why not?

A Amicon was a stock the sale of which was restricted under the SEC rules and the Securities Act.

A JUROR: I can't hear.

THE COURT: Would you speak up, please?

Q Speak up, Mr. Richardson.

A Dr. Foley was a director of the company, of Amicon. This was information told to us by Mr. Feldman and Mr. Foley at the inception of the transaction with them, that Amicon was a stock in Dr. Foley's name. It had a legend saying these securities may not be sold without compliance with the requirement s of the Securities Act of 1933.

THE COURT: Without going into the technicalities which the jury may not understand, the fact is, is it, that Dr. Foley's stock in Amicon could not be freely bought and sold?

THE WITNESS: That's right. There was no existing market for it.

THE COURT: And therefore neither Blair nor anybody else, for that matter, could regard it as part of their capital, is that right?

THE WITNESS: It was possible, with certain steps being taken, to have it included as capital, which we intended to do.

THE COURT: Certain steps had to be taken, and they never were consummated, is that it?

THE WITNESS: No. Attempts were made to have this stock made as capital, but they were unusccessful.

Q What was the total market value of the Amicon stock at that time that Mr. Foley had in his portfolio, or that he was offering to Blair?

A The information I had was that it was approx-mately a million dollars.

Q So that without the Amicon he then only had $3 million in market value, approximately to offer to Blair?

A Yes. That was based on the market value at that time at the end of February or the end of January. I am not certain which.

Q Well, do you recall whether there was any gain or loss in that remaining stock of Mr. Foley's when

the Amicon was taken away, between the end of February and April 3?

A This was a period of general decline in the market, and the total market value of Dr.Foley 's portfolio declined to some extent during that period prior to the closing, between the dates that we were first informed about what the stocks would be and --

Q Do you have a recollection of what the actual market value of Mr. Foley's securities that were contributed to Blair were at April 3?

A Approximately $2,750,000.

Q And that was market value.

A Yes.

Q Are you familiar with the term "haircut"?

A Yes.

Q What does that mean?

THE COURT: We all know what it means.

MR. BROOKS: All right.

Q Mr. Richardson, did Blair actually take custody of the Amicon stock to try to take those special measures to get it to qualify as good capital?

A The certificate was turned over to Blair by Dr. Foley, the certificate or certificates representing the Amicon stock.

Q Did you make efforts to get it qualified as good capital?

A Yes.

Q You were not successful?

A No.

Q Did he get it back?

A Yes.

(continued on next page.)

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Q Mr. Richardson, I show you a letter dated April 3, 1970, form Mr. Foley to the New York Stock Exchang that has been marked in evidence as Plaintiffs' Exhibit 13, and sometimes referred to as the knowledgeability letter.

Have you seen that before, sir?

A Yes.

Q Did you ever discuss that letter with Mr. Feldman?

A Yes.

Q When?

A Either the day of the closing or the day before the closing.

Q Did you show that to Mr. Feldman when you discussed it with him?

A Either I showed it to him or he had a copy. My recollection is not clear whether we were talking over the telephone or face to face about this.

Q Well, if you were talking on the telephone, how did you know Mr. Feldman had a copy of the letter?

MR. FRIED: Your Honor, this is pure speculation.

THE COURT: Not necessarily. I suppose it would form the basis for his previous statement.

A His responses to my initial statement would have to indicate whether he had a copy of the draft.

THE COURT: You mean, you were discussing it in great detail? Is that what you are suggesting?

THE WITNESS: It is probably such a short document. I asked him if he had seen it and what he thought of it.

THE COURT: But you don't know whether he actually had it in his hand?

THE WITNESS: No, sir. I assume he did, but he probably --

MR. FRIED: I move to strike that out.

THE COURT: Yes, I will strike that part.

Q Did you discuss with Mr. Feldman particular points that are contained in Exhibit 13?

A I don't believe so. Mr. Feldman's communication in regard to this was that it was satisfactory. He said there would be no problem for Dr. Foley.

Q Is that the substance of the discussion?

A Yes.

Q Now, Mr. Richardson, Exhibit 13 refers to a March 10, 1970 letter from the New York Stock Exchange. I show you what has been marked as Exhibit 15 in evidence, which is a March 10th letter from Mr. Bishop of the Stock

Exchange to Mr. Ramsey of Blair & Co., and I ask you if, prior to or on April 3 you had occasion to see Exhibit 15?

A Yes, sir, I have seen this.

Q Did you see it between March 10 and April 3, which was the date of the closing with Mr. Foley?

A Yes.

Q Tell me under what circumstances you saw the March 10th letter between that time -- between those two dates.

A I can't give you a specific recollection. I am sorry. The routine would have been that Mr. Ramsey would have called me in his office and handed me a Xerox copy of it.

Q To your knowledge, was the March 10th letter shown to Mr.Feldman?

A I can't be certain of the actual -- the contents were made certain to him. I am certain about that I don't know whether he was actually given a copy or not.

Q Was Mr. Foley given or shown a copy, to your knowledge?

A Not to my knowledge. I didn't give it to him.

Q YOu didn't give it to him?

A No. I had very little direct communication with Dr. Foley. As I said, the last meeting I attended with

him probably was prior to March 10, about that time, and I didn't see him again until the 3rd of April.

Q Did you ever give Mr. Rush a copy of this March 10th letter?

A Mr. Rush had a copy, I believe.

Q He had a copy?

A I don't know who gave it to him.

THE COURT: Did you ask if he gave a copy to Mr. Feldman?

MR. BROOKS: I believe I did.

THE COURT: And what was the answer?

MR. BROOKS: He said he was familiar with the contents, but he didn't recall if he had been given a copy of it.

THE WITNESS: He was either given a copy or told what the contents were.

Q Mr. Richardson, are you aware of the fact that Blair & Co. liquidated certain collateral in the secured demand note accounts of members and allied members some time during the week beginning April 6?

A Yes.

Q What was the purpose of that, of selling the securities in those accounts?

A There were two purposes. The first and primary

purpose was to increase the firm's capital, because it would eliminate the haircut that would normally have to be applied if the capital was inthe form of securities. CAsh would be taken into account at 100 cents on the dollar. So it had generally the effect of adding 30 per cent to the valuation.

The second purpose was to provide additional working capital. The money available from the sale of those securities would be available for working capital and reduce the amount of the firm's loans and their debt load.

Q To your knowledge, was it intended at Blair --

MR. BROOKS: Strike that.

(continued on next page.)

d 6A

Q Was it intended on April 3rd, the day of the closing, to liquidate that insider capital in the following week?

MR. FRIED: I object to the form of the question, your HOnor.

THE COURT: I am puzzled by the question.

Do you mean when did Blair resolve to do so or what?

MR. BROOKS: I will withdraw the question. I think the record is clear when they formally resolved to do that.

Q Mr. Richardson, did you, during the period January 1970 through the end of April or May, attend any meetings with personnel of the Securities and Exchange Commission?

A I attended one meeting in January or February, attended by Mr. Fred Stock, who was a vice-president of the Exchange.

Q That was a meeting with the Securities and Exchange Commission, was it not?

A Not that meeting. This is a meeting that occurred at Blair & Company, in the Operations Department.

THE COURT: I thought Mr. Brooks was asking about prior meetings.

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Meetings that you attended where personnel from the Securities and Exchange Commission were also present.

A The Securities and Exchange -- yes. I attended two meetings, I believe, at the regional office of the SEC here in New York.

Q That is at Federal Plaza, across the street here, isn't it?

A Yes.

Q Can you tell me as best you recall what the dates were of those meetings?

A I don't recall the specific dates. April -- April and/or May of 1970.

Q Can you tell me whether you attended any meeting at the Securities and Exchange Commission prior to the Foley closing, on April 3rd?

A I don't recall specifically. It's -- possibly --

Q Can you separate the meetings, the two meetings that you do recall, in your mind, one from the other so that you can tell me who was at the first and who was at the second, what was said at the first and what was said at the second?

A There were a large number of people in attendance at both meetings. They were attended by Mr. Ramsey

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and Mr. Morpurgo of Blair & Company. Mr. Rush. Mr. Joseph Daley of Mudge, Rose attended one of those meetings. It was attended by the regional administrator, Mr. Kevin Duffy, and Mr. Moran, his chief assistant, of the SEC.

Q Is this true for both meetings, as you recall?

A That is generally the cast of characters at both meetings.

Q Do you recall what was said at the first meeting as opposed to the second meeting?

A Well, the second meeting updated information that was given at the first meeting. The SEC was presented with a great deal of statistics and reports about operations, the condition of the company's fail accounts and amount of bank loans, and at the second meeting, a second set of papers were presented, which brought up to date the information that had been given before.

We were advised by Mr. Duffy that the SEC was watching the situation very carefully.

Q Were these statistics about Blair & Company?

A Yes.

Q Mr. Richardson, I show you a memorandum that I have marked for identification as Exhibit HHH, and I ask you if you can identify that.

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A Yes, I prepared this memorandum.

MR. BROOKS: I offer it in evidence, your Honor.

THE WITNESS: It is dated May 4, 1970.

MR. FRIED: Your Honor, just to be consistent, this is after April 3rd, and I have a consistent objection to anything that happened after April 3rd.

THE COURT: All right. It is consistent. I do not know anything about the subject matter, so if that is the only objection, it is overruled.

(Defendants' Exhibit HHH for identification was received in evidence)

Q Mr. Richardson, this is a memorandum from you to Melville H. Ireland dated May 4, 1970. You testified you prepared it.

A Yes.

Q Did you send it to Mr. Ireland?

A I handed it to him in the office, I believe. It wasn't for general distribution.

Q What was the purpose of your preparing and handing this memorandum to Mr. Ireland?

MR. FRIED: I object to this, your Honor. It speaks for itself.

THE COURT: Well, I do not think its purpose speaks for itself.

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A Mr. Ireland asked me to summarize for him the status of the firm's capital needs and any possible attempts to withdraw capital by investors and related matters, and this is in response to his request for information of this type.

THE COURT: Mr. Brooks, I suggest that we break for lunch now. We have not had any morning recess.

MR. BROOKS: Very well, your Honor.

THE COURT: We will resume again at 2:00 o'clock.

(Luncheon recess)

AFTERNOON SESSION

2:00 P.M.

(In open court - jury present)

JOHN B. RICHARDSON, resumed.

MR. BROOKS: Your Honor, before we stopped for lunch, Exhibit HHH was admitted into evidence. I would like to read portions of it, with your permission.

I am not sure the jury knows what it is.

MR. BROOKS: HHH was the last exhibit in evidence. It is a memorandum dated May 4, 1970 from Mr. Richardson to Mr. Ireland.

MR. FRIED: With regard to HHH, I have read it now during the lunch hour. I particularly object to that portion of the exhibit on the second page. It is inadmissible. It is a narrative after the fact and it is a self-serving declaration. Subdivision B, your Honor.

THE COURT: Do you want to comment on that?

MR. BROOKS: Yes, your Honor.

I think it is part of a contemporaneous document prepared by Blair. Although it is a month after April 3rd, it is certainly not made at a time when Dr. Foley had kicked up any fuss at Blair.

I think it is probative of what the writer's understanding was of the transaction one month later.

THE COURT: It seems to me that it ought not to be admissible for the reasons stated by Mr. Fried, at least not admissible at this time, particularly since the witness has testified to the substance of what is contained in Paragraph B and has not been cross examined.

There is no dispute at the moment as to his account of the facts. If the document is needed later to corroborate or to rebut, I will reconsider. But I think at this time it would simply duplicate what the witness has testified to.

MR. BROOKS: Is the exhibit still in evidence for the remainder of the exhibit? Mr. Fried only objected to that paragraph.

THE COURT: I don't know. That is why I said at the time that if Mr. Fried's only objection was that it was a document which was dated after April 3rd, I could not agree that that alone would exclude it.

I would rather not have to go through it item by item, Mr. Fried.

MR. FRIED: Your Honor, I have a general objection to the entire exhibit on the ground that it is after the fact, after April 3rd. I have a specific objection

to Paragraph B because it is not part of the res gestae and it is a narrative statement after the fact.

THE COURT: Then I overrule the objection insofar as it only relates to being after April 3rd and I sustain you as to Subparagraph B, which, so far as I can see, having been through all those computations this morning, leaving everything but B in evidence.

MR. BROOKS: Your Honor, we, with your permission, will then substitute a revised exhibit which would block out Subparagraph B.

THE COURT: All right.

MR. BROOKS: The passages I was going to read did not include Subparagraph B. So, if I may read those --

THE COURT: All right.

MR. BROOKS: The memorandum is dated May 4, 1970. It is from Mr. Richardson to Mr. Ireland. It begins:

"This memorandum will discuss the outlook for Blair's prospects for meeting the minimum net capital requirements of Rule 325 of the New York Stock Exchange.

"A. Immediate Capital Needs and Prospects:

"On the assumption that, as demanded by the New York Stock Exchange, Blair's revenues and expenses are

brought into balance by June 1, 1970, additional capital will be required to the following extent (all figures are estimated):

"Withdrawals to September 30, 1970 (net) $3 million; losses for April and May, $2,400,000, for a total of $5,400,000.

"Capital is potentially available from the following sources:

"Blair Fund, $350,000; hot stocks, $700,000."

DIRECT EXAMINATION CONTINUED

BY MR. BROOKS:

Q What are "hot stocks," Mr. Richardson?

A Non-negotiable securities, which are restricted for some reason

Q It could be sold?

A Such as the Amicon stock, for instance. They could not be sold, privately placed, without having to be cleared with the SEC.

Q And, I take it, sold for $700,000.

A Well, that was an estimate of how much they could be sold for.

THE COURT: Hot stocks did not mean that the cops were looking for them, I take it.

MR. BROOKS: Continuing in that column:

"CMC stock, $1,100,000; back-office recoveries within sixty days, $2,150,000, for a total of $4,300,000.

"These figures assume that the restricted stocks (including CMC) will be privately placed and that in the case of the 'spun-off securities 75 percent of net proceeds will be held as firm capital for at least one year. The potential back-office recoveries are as estimated by George Morpurgo."

Q Let me pause for a minute, Mr. Richardson.

What is meant where you use the term "back-office recoveries"?

A The location of missing stocks, clearing up out of balance conditions.

Q Does it include such things as resolving fails to deliver and fails to receive and such things as that?

A Possibly, yes.

THE COURT: So reversing any losses that occurred, right?

THE WITNESS: Yes.

MR. BROOKS: Continuing on:

"Potential sources of new outside capital are:

"1. Finserv Corp. Mr. Vanderbilt has had several

meetings with Finserv officers. He has proposed that a $10 million in cash or $14,300,000 in marketable securities be made available as senior capital with options on Blair stock at the rate of 3,840 shares of $4 preferred and 15,360 shares of common per million of senior capital. Exercise price of the option will be $29 per unit of 4 common shares and one preferred share.

"2. It is expected that two other potential corporate investors will be conferred with this week with a view to the same type of investment as the one being considered by Finserv.

"An investment from any of the above sources cannot be counted on at this time. Under NYSE rules, we can now offer outsiders, other than potential allied members, only about a 25 percent equity interest in Blair. The proposed option to Finserv or others would be exercisable only to the extent permitted by those rules."

I would like to skip down and read this third paragraph in Section C.

Section C is entitled "Possible Harassing Action of Disgruntled Persons:

"Out of the general morass that goes back into the Schwabacher firm (pre-February 28, 1969) and has continued since the Schwabacher acquisition, there are

many situations that might produce lawsuits or arbitration proceedings on the part of unhappy stockholders or investors.

end t

Q Mr. Richardson, I would like to call your attention to that last paragraph that I just read and ask you to tell me what you mean when you say there that they are possibly harassing actions of disgruntled persons that may arise from the Schwabacher morass?

A Prior to the acquisitioon of the Schwabacher firm by Blair, Schwabacher had been in serious financial difficulties of it s own and they had a rather large number of partners, and many of the junior partners contended, at about the time that this memorandum was written, that they had been tricked by the senior partners into staying in the firm and letting their capital go in to Blair, and they were th æatening lawsuits against the Schwabacher executive committee, essentially.

Q So, if I read you correctly, these are disputes between Schwabacher partners.

A Primarily intra-Schwabacher matters.

THE COURT: But did you mean to suggest that as a result claims might be brought against Blair?

THE WITNESS: Yes, sir. As a matter of fact, som lawsuits were brought and they named Blair & Co. as a defendant in matters which really were properly brought against the Schwabacher individuals.

THE COURT: I am not asking how the suits

lined up but what you were intending to convey when you wrote this as to Blair.

THE WITNESS: Yes. Primarily it could have had some substantially adverse effects on Blair, because there would be squabbles within the firm,and it would disrupt the normal smooth operations that we would hope to be having shortly.

Q Mr. Richardson, I completed examination on Exhib it HHH. I would like to take your attention back to the withdrawal provisions that Mr. Foley and Mr. Feldman negotiated with you and Mr. Segal that appear in the collateral agreement, which is Exhibit 9.

Were those withdrawal provisions, or anything like those withdrawal provisions, contained in any other such collateral agreement which Blair had with any other investor?

A No, sir, nothing remotely resembling this type of provision.

Q Did you attend the closing on April 3?

A Yes.

Q Did Mr. Foley sign a number of documents at that closing?

A Yes.

Q Did Mr. Foley sign any document that was not

first submitted to Mr. Feldman?

A Not to my knowledge.

Q Do you still have Exhibit FFF before you?

A Is this the March 10th --

Q No. It is the list of subordinated liabilities.

A Yes.

Q Do you recall that the grand total of the investments on that list came to some $25 million?

Do you recall whether any of that $25 million was in cash as opposed to securities?

A The figure set forth on the last page of total debentures and notes says $2,891,325. That is all basically debt instruments, not represented by collateral.

MR. FRIED: I submit that is not an answer.

THE COURT: It is an answer, but I am not sure whether it is a proper answer.

Mr. Brooks, is that what you were inquiring about or were you inquiring literally about cash? Did you mean to say -non-collateralized or did you mean to ask whether some people had put cash in rather than securities?

MR. BROOKS: I am not sure that there is a difference. But let me pursue it with the witness, your Honor.

Q What did you mean when you gave the answer that

that two million figure was in debentures and notes, in response to my question was any of the capital incash?

A To distinguish it from the earlier pages of the schedule which represents subordinated loans of securities to serve as capital.

Q And the two million figure that you menticned on the last page represents a contribution of cash, does it not?

MR. FRIED: Your Honor, that isn't so.

THE COURT: It may or may not be so. I am trying to find out whether it is so.

A If I can be permitted to give a small detailed explanation, the debentures all represent actual cash contributions.

THE COURT: IN the sense that somebody bought a debenture from the corporation and paid cash for it, is that right?

MR. FRIED: Even so, you have a promissory note now. If the person doesn't want to pay that, then you have to assume. That is not cash in hand.

THE WITNESS: Blair & Co. owed that cash. These people had invested the cash.

THE COURT: The cash came to Blair for issuances of its debentures, right?

THE WITNESS: Yes.

And the 8 per cent subordinated notes, if I may be allowed to finish, were issued to holders of Blair equity, common and preferred stocks, who upon leaving the employ of the firm were required to sell any securities that they owned, any equity securities back to the firm at the comput ed book value at the time they left.

And there was a provision in the firm's certificate of incorporation which required that if the firm's capital would be diminished to a certain level by the payment of cash for those securities, that in lieu of that an 8 per cent subordinated note would be issued to those people. Those were the terms that were specified.

(continued on next page.)

d 1B

Q Now, am I correct that it follows from your answer that a portion of that $21,750,000 original capital figure that is found in the collateral agreement and is part of Mr. Foley's formula wasn't in the form of marketable securities but was in the form of cash?

A To the extent of $2,891,000. That is about the formula --

Q Now, I believe you testified that in the week of April 6th some of the collateral behind the secured demand notes of membe rs and allied members was sold for cash, is that correct?

A Thatis correct.

Q After that sale, do you know how much of original capital was inthe form of cash, because we added more cash or converted securities to be added to the cash with which we started how much cash --

A This schedule is not broken down on a basis that I could determine the exact figure.

Q Do you have an approximation?

A I would have to go through and determine which one an affiliated member or an insider, because their securities were the only ones that were sold, the outsiders--

Q Well, do you have any idea how much in dollar terms of the marketable securities in the insiders' accounts

were sold? Do you know that it was more than a million and less than 20 million?

A Yes.

Q Can you tell us in what range you would place it, between what figures?

A Possibly between 10 and 15 million.

MR. FRIED: Your Honor, I submit it has no value at all unless we have the definite figures.

THE COURT: I think it should be possible to cull out whatever information you need to make it precise.

Q Do you have an approximation, Mr. Richardson?

A Not without guessing or checking --

THE COURT: During the recess why don't we let Mr. Richardson look this over. It won't take very long.

A About five or ten minutes, I guess.

Q Would I be safe in saying that it was at least several million dollars?

A Yes.

Q Now, did that increase in the cash portion of original capital and quantity decrease in the marketable securities portion of original capital prohibit Mr. Foley's formula from working in any way?

A It would have no effect on the formula. It was in conformity with the formula provisions, to

[This page left blank intentionally.]

Q Now, Mr. Richardson, when those securities were sold for cash which then increased the cash portion of original capital --

MR. BROOKS: Well, strike that.

Q Do you know what direction the market went after the sale of those securities for cash, in respect of those securities? Did the value of the securities that were sold decrease or increase after April 3?

A It has been a long time since April 3. From April 3 to what subsequent date?

Q August 1st.

THE COURT: When Blair ceased operations, I suppose.

THE WITNESS: I haven't reviewed that recently. The market has gone and down since that period. I am not sure they went down.

THE COURT: You can produce documents of which the Court can take judicial notice as to the value of the stock.

THE WITNESS: I am sure IBM stock went down at that time. We had that question up --

Q Mr. Richardson, did you ever tell Mr. Feldman that the Foley capital contribution would put Blair into capital compliance?

A No.

Q Let me show you two letters that appear to have been written by you, that have been marked for identificatio as Exhibits 6A and 63, and ask you if you can identify your signatu re on each of t. m.

A Yes. I recogniz those two letters.

MR. BROOKS: Your Honor, these are the letters from Mr. Richardson to Mr. Deignan which attach a form of letter to be signed by a major bank to try to give capital value to the Amicon stock.

Q Mr. Richardson, can you tell me the circumstance under which you wrote the first letter -- I believe it is Exhibit 68A.

A Yes. 62A.

Q 62A. I am sorry.

A We had been advised by Mr. Feldman in the first or second meeting that we had with him, that the Amicon stock was restricted as to sale and that negotiations for the making of a loan by Dr. Foley with another member firm had commenced just prior to the commencement of the transaction with Blair, and the question of the Amicon stock had come up then and they had gotten an approval by the signing of a form of letter to be signed by a major bank with respect to making a loan on the Amicon stock

which would then permit the Amicon stock to be used as net capital.

Q That other firm?

A Yes. And Mr.Feldman was quite confident that the same letter could be used by us. When he produced the letter, I immediately sent it over to the Department of Members Firms of the New York Stock Exchange and ask them if they would approve it.

We had been given the name of the bank which indicated that they would make the loan, and I believe Mr. Deignan called me back after he received my letter and stated the form of the letter wasn't satisfactory because it didn't provide for a non-recourse loan by the bank on the Amicon stock, which was essential to its being used as collateral.

Q Did you tell Mr. Deignan that Mr. Feldman had said the Stock Exchange had approved this form of letter for another form?

A The second paragraph of my letter of March 24th states that.

Q Did he give you any information about that?

A Well, he said that they had never approved any such form of letter. He didn't understand -- it was certainly not in conformity with the Exchange's requirements

for this type of loan.

Q Now, as I recall it, the second letter you have there is written two days later?

A Yes.

Q And submits a more extensive proposed form of letter for a major bank to sign. What number is the second letter?

A 63. It is marked 63.

Q 63, is that correct, sir?

A Yes, it is dated March 25, 1970.

Q Who prepared the form of letter attached to Exhibit 63?

A I did. Mr.Deignan suggested that I draft a suggested form of letter which would comply.

Q Now, as I understand it --

MR. BROOKS: Strike that.

Q WAs the second form of letter acceptable to the Stock Exchange?

A Yes, it was.

Q What was the hitch, then, in qualifying the Amicon stock?

A Well, after getting clearance of this revised form of letter from the Exchange, I then gave it to Mr. Feldman -- I probably gave it to him in person, I believe

when he was in our office, and he said that he would take up the negotiations with the New England Bank, which would sign the letter, and at the time of the closing we had not had any response back from the bank. We had the Amicon stock certificates.

Some time within a week or so after the closing we were advised by Mr. Feldman that the bank had turned down the offer. They said they would not sign the letter in this form. We had to change some of the provisions.

Q Mr. Richardson, we were trying to approximate the amount of collateral in the members and allied members' accounts that were sold during the week of April 6.

Let me try to refresh your recollection by showing you Exhibit JJ in evidence, and I will ask you to read the second paragraph of it and say if that refreshes your recollection as to the amount that was sold at that time.

A Yes.

Q What is your recollection, as refreshed?

A The actual sales had been made of $11,317,000 worth of securities, collateral securities, and orders for addition $2 million worth had been entered but hadn't been executed.

THE COURT: Ordered for sale?

THE WITNESS: Yes, which made a total of $13,300,000, roughly.

THE COURT: As of what date?

THE WITNESS: This is April 9, the Wednesday following the close.

Q And as a result of that market action Blair would have that amount in cash, is that correct?

A That amount in cash, and it increased the amount of the firm capital by $2,500,000.

MR. BROOKS: I have no further questions, your Honor.

CROSS-EXAMINATION

BY MR. FRIED:

Q Mr. Richardson, what is your present occupation?

A I am a self-employed lawyer.

Q Do you maintain law offices for the general practice of law, Mr. Richardson?

A Yes, sir. I work out of my home, actually.

Q Do you practice under any firm name?

A No, sir, just my own.

Q I think you stated that you were with Blair & Co. until 1972, is that correct?

A That is right, yes, sir.

Q Didn't Blair & Co. in 1970 or thereabouts have

* * *

REDIRECT EXAMINATION

BY MR. BROOKS:

Q Mr. Richardson, I am going to give you the Foley collateral agreement, which is Exhibit 9 in evidence and recall to you perhaps the observation, that Mr. Foley did lose his investment in Blair and also recall to you that you told us that Dr. Foley attempted to withdraw his money from Blair, but it was found that the time wasn't ripe as you testified.

MR. FRIED: Your Honor, Mr. Brooks is testifying.

THE COURT: He is recapitulating testimony.

What is the question?

Q My question, Mr. Richardson is, would you tell the jury why Dr. Foley's formula didn't prevent his losing his investment in Blair?

MR. FRIED: I object to that, your Honor.

THE COURT: Well, I think he is allowed to ask Mr. Richardson this: Was it possible under the terms of the collateral agreement that Mr. Foley would lose his investment in Blair, and if so, how could that occur?

A It was certainly possible that it might be lost. It was a speculative investment.

THE COURT: I think what Mr.Brooks means is,

was he protected against such loss by the terms of the agreement.

THE WITNESS: The terms of the agreement provided for a periodic determination of the capital as it stood on the termination date.

Q What was the termination date at the time in August when Dr. Foley stood to lose his capital?

THE COURT: Well, I assume the agreement speaks for itself, and Mr. Richardson's explanation would be no more valid than that.

MR. BROOKS: I will withdraw it, then .

Thank you, Mr. Richardson. No further questions.

THE COURT: Since we started late and are going slow, I would like to go right ahead, if it is agreeable to the counsel and the jury.

MR. BROOKS: It is agreeable.

THE COURT: All right.

(Witness excused.)

J O S E P H C. D A L E Y, called as a witness by the defense, being first duly sworn and testified as follows:

THE COURT: Mr.Daley, you are already speaking in a loud, good voice, but you will notice you are sitting on this side, so will you keep your voice up?

* * *

(In open court - jury present)

THE COURT: I have some news for you which I do not think will disappoint you, but counsel have found some ways to shorten the trial, so we will not have to sit tomorrow, and you will be free to do whatever you wish.

However, I have told counsel that if their estimates prove faulty and we get behind again we will have to sit late Monday evening and/or Tuesday evening.

MR. REILLY: We would like to call Mr. Cambere, your Honor, interrupting the testimony of Mr. Bishop.

THE COURT: We will hear Mr. Cambere, interrupting Mr. Bishop's testimony, because Mr. Cambere is available at this time.

A R A A . C A M B E R E , called as a witness by the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BROOKS:

Q Mr. Cambere, would you summarize briefly your businesw experience and background?

A Shortly after college I joined Jayden, Stone & Company in 1936, as a runner, stayed there until 1949, went into industry for ten years, came back to Hayden, Stone late in, I would say, August of 1960 as a partner

of the firm.

In 1961 I became a corporation -- I became a vice-president in Chicago.

Q What kind of a firm is or was Hayden, Stone?

A Hayden, Stone was a member firm, engaged in distribution of securities and the underwriting of securities.

Q What was your position at Hayden, Stone during the period 1965 to December 1968?

A 1965 -- I had become executive vice-president. Prior to that, and in 1965 I became president until the end of 1968.

Q Did you have any position thereafter with Hayden, Stone?

A In 1969 I became vice-chairman of the board.

Q And you left the firm in 1970?

A Right to the very end of 1970. September 11th. I remember the date well.

Q By whom are you now employed?

A I am with Hornblower & Weeks, Hemphill, Myes, Inc.

Q Is that also a member firm of the New York Stock Exchange?

A Yes.

Q And what is your title?

A I am a senior vice-president there.

Q Mr. Cambere, did there come a time in 1969 when you met John Foley?

A Indeed.

Q How was that meeting arranged?

A It was arranged through one of our vice-presidents to meet with Mr. Foley, oh, I would say early in '69. Maybe the first or second quarter.

Q Do you recall the name of that vice-president?

A Indeed. His name is Dudley G. Luce.

Q Do you recall where the meeting took place?

A That I don't.

Q Can you recall what was said by anyone at that meeting, the substance of what was said?

MR. FRIED: I submit this is wholly immaterial.

THE COURT: Sustained.

Q In this meeting -- was this meeting called for the purpose of discussing an investment --

THE COURT: May I suggest, Mr. Reilly, that Mr. Cambere's testimony ought to be substantially restricted to the actual dealings with Dr. Foley.

Q Well, I understood your recollection was that a meeting did take place in early 1969.

A Yes, sir,.

Q Did Dr. Foley attend that meeting?

A Yes, sir.

Q And did you attend the meeting?

A Yes, sir.

Q What was the purpose of this meeting?

A The purpose of the meeting was for Dr. Foley and his counsel to discuss with us an exploration of his becoming a subordinated lender to Hayden, Stone.

Q Do you recall the name of his counsel?

A Leonard Feldman.

Q He was present also?

A Yes, sir.

Q Can you recall what was said by Dr. Foley at that meeting?

A Well, Dr. Foley gave me another very good rundown of his background and his interest in the street. He had previous street connections in his particular psychological work and felt that he would like to make an investment in a member firm and he would like to explore with us on what basis you did this.

And we took the tack of a subordinated account, which is really the initial kickoff.

Q Can you recall anything else that he said during that meeting, or any questions he may have asked?

A The initial hearing -- it is hard for me to recall, so long ago, whether it was this meeting or a later one, so I'm sorry to semi-duck your question.

But it was generally what the business of Hayden, Stone was, what its plans were, what we had been doing, what we had hoped to be able to do.

In other words, he was getting a feel of the business, as anybody would contemplating an investment.

Q Do you recall how many meetings you had at which Dr. Foley was present during 1969?

A I would guess it was at least six meetings.

Q I show you Defendants' Exhibit MMM for identification and ask if you can identify it.

THE COURT: Do you have an extra set of those exhibits?

MR. REILLY: Yes, your Honor.

THE COURT: Thank you.

A Yes, I recall this. This is my memorandum to Mr. Coyle, who was Chairman, President and Chief Executive of Hayden, Stone Company.

Q Does that memorandum summarize the terms of the proposed investment that was being contemplated by the parties at that time?

A Yes, sir.

MR. FRIED: I object to that. The memorandum is not in evidence and I am going to object --

MR. REILLY: I am going to offer it in evidence. I am simply laying the foundation for it.

MR. FRIED: There is no basis for this memorandum.

THE COURT: Sustained. It seems to me, if you want to ask the witness what happened between him and

Dr. Foley, you are free to do so. This can be used, if necessary, to refresh his recollection.

But I sustain the objection to it as an item in evidence, at this time anyway.

Q Could you tell us anything additional that was said by you or by Mr. Foley during any of the six meetings, or approximately six meetings, that you had with him during 1969?

A Well, as everyone will recall, at that time we had been through a very horrible paper crunch --

MR. FRIED: I move to strike that out, your Honor. We are only interested in the conversations he had with Dr. Foley.

THE WITNESS: Excuse me.

Q We only want to know what you told Dr. Foley and what Dr. Foley said to you, not the precise words but the substance.

A The substance was that we had been through a horrible time with our back office.

THE COURT: You mean you discussed it?

THE WITNESS: Yes, indeed, sir.

THE COURT: All right.

Q Did you tell him what caused the horrible time that you had experienced?

A I was referring to the paper crunch, the tremendous influx of volume and so forth, and the lack of trained personnel, and gave him our problems. Of course, during the course of our various meetings we gave him the plus side, there were many pluses, and I also wanted to have full disclosure to Dr. Foley of all the minus.

And we talked about stock record differences, we talked about dividend differences. Dr. Foley asked whether this came from a lack of good personnel, and I said in many cases this was true. What appealed to me was that Dr. Foley indicated that on the basis of the work he had been doing in the psychological field, that he might be of great help to us in finding and training the right people.

So this, to me, as Vice-Chairman at that time, was a two-edged sword: We would have someone contributing capital as well as making a valuable contribution in the organization of the firm.

Q Did Dr. Foley make any specific comments with respect to the stock record differences?

A Not that I recall.

Q Did he mention short stock record differences or long stock record differences?

A Not that I recall.

Q Was anything said by anyone at these meetings concerning the need --

MR. FRIED: I object to counsel leading the witness.

THE COURT: Sustained.

MR. REILLY: I will reframe the question.

Q Was anything said with respect to the capital of Hayden, Stone?

A Yes. I had indicated, I believe to Dr. Foley, that in light of the differences, stock record differences, dividend differences, et cetera, we had set up large reserves on our books, which of course affected our capital position, and that we wanted to bolster our capital, and that's why I was interested in talking to him about it.

Maybe I've forgotten the question.

THE COURT: No. You answered the question.

Q During any of these conversations, was there reference made to the New York Stock Exchange?

A Oh, yes. I made it very clear, and I'm sure Mr. Feldman understood it as well as Mr. Foley, that we would have to have a clearance letter filed with the New York Stock Exchange indicating that full disclosure had been made to Dr. Foley of our situation.

And I lean over backwards in saying that I wanted to make sure that any investor that came in did have full disclosure, and I'm sure that we gave it to him.

Q Was this a letter to be signed by Dr. Foley and sent to the Exchange?

A Yes, sir.

Q Is that also sometimes referred to in the industry as a knowledgeability letter?

A Yes. This is a requirement of the Exchange, which I'm sure you know.

Q Who is Mr. A.J. Coyle, the addressee of the memorandum marked for identification as MMM?

A In 1969 he was chairman, president and chief executive officer of Hayden, Stone, Inc.

Q Is that a memorandum that you made on or about the date it bears?

A Yes, it is, sir.

Q Did you transmit that memorandum to Mr. Coyle?

A Indeed.

MR. REILLY: I renew the offer, your Honor.

MR. FRIED: Same objection, your Honor.

THE COURT: Sustained. It is not a question of competence, Mr. Reilly. It is a question of probative effect or lack of it.

Q I show you Exhibit NNN for identification, which appears to be two August 4th memoranda, and ask if you can identify them.

THE COURT: I think you are going to have the same problems with a lot of these and I think the best way to bring out the information in these is by testimony of the witness. I mean, I have turned to see what the contents of this are, and if the witness remembers it, that is fine. If he does not remember it, you may wish to use it to refresh his recollection. If it is necessary on redirect, in the light of something that has arisen on cross, that might be all right. But I do not see any need for it at the moment.

MR. REILLY: Well, your Honor, I feel that, if I may be heard on the point --

THE COURT: Perhaps we had best take a moment i. the robing room.

We will try to make it brief, ladies and gentlemen.

(In the robing room)

THE COURT: Let me explain the way I see it to begin with, and then you tell me how you disagree.

As I see it, you got a witness on the stand who at least so far seems to recall the events perfectly

* * *

received in evidence)

MR. REILLY: This may be slightly repetitious. I hope your Honor will bear with me.

BY MR. REILLY:

Q Mr. Cambere, do you recall anything of the six or so meetings you had with Dr. Foley in 1969 that was said by you or him that you have not testified to?

Do you recall anything else that was said?

A I am sorry. I don't hear you, Mr. Reilly.

Q Do you recall anything else other than as you have now testified, that was said by either you or Dr. Foley during the 1969 meetings? Do you recall anything in addition to what you have said before?

A Well, the meetings developed into one of refining the negotiations of the kind of argument that we were willing to do.

Dr. Foley had come back with a modification to it that we took under advisement, consideration, whatever you might call it. There was some considering haggling along these lines.

Q Let me show you --

A I am trying to figure out what you are driving at.

MR. FRIED: I suggest the witness should not

try to figure out what he is driving at but answer the question.

THE COURT: I agree.

THE WITNESS: We certainly did talk terms. This is where the negotiation --

THE COURT: In Dr. Foley's presence?

THE WITNESS: Yes, indeed.

Q I show you Exhibit O and ask you if that reflects the stage of the negotiations up to that date?

MR. FRIED: I object to that, your Honor. All that Exhibit O shows is that the documents were admitted.

THE COURT: Will you tell us what Exhibit O represents?

THE WITNESS: May I take a moment to look at it?

THE COURT: I am going to try and speed this thing up a little bit by some neutral questions.

Mr. Cambere, attached to the letter of August 8th is another longish letter, is that right, beginning on the third page of the exhibit.

You start out with the letter here. Now, two pages later there is another letter. Is that second letter, is that a proposal from Hayden, Stone to Dr. Foley?

THE WITNESS: Yes.

THE COURT: And the next document: What is that?

THE WITNESS: That is the form of the subordination agreement that we used with our other subordinated lenders.

THE COURT: And that he proposed that Dr. Foley enter into?

THE WITNESS: Yes, sir.

THE COURT: And these documents were sent with a covering letter to Mr. Feldman?

THE WITNESS: That's correct.

THE COURT: And do they fairly establish the position of Hayden, Stone vis-a-vis Dr. Foley on August 8, 1969?

THE WITNESS: Yes, your Honor.

Q Will you tell us what Exhibit PPP is, Mr. Cambere?

A Well, here they were beginning to negotiate better terms than is outlined in the letter of August 8th.

Q Does that simply reflect an additional term that was being negotiated at that time?

A That's right.

Q And what is the date of that, sir?

A August 18th.

Q And will you tell us what Exhibit QQQ is. Is that a similar document?

A May I hear your question again?

Q Is that a similar type document? Does that similarly reflect a new proposal or negotiation or modification of the negotiation of the terms?

THE COURT: I think it rather speaks for itself. There are several documents, and these documents were connected with the negotiation.

THE WITNESS: Exactly.

MR. REILLY: That is all I wanted to establish.

Q Is Exhibit UUU a copy of a letter that you sent to Dr. Foley on or about the date it bears, November 25, 1969?

A Yes, I did, in an attempt to keep him updated on this full disclosure I mentioned earlier.

Q It appears that there is a reference in that to Hayden, Stone prospectus 30.

A Yes.

Q And an earlier one identified as copy No. 10.

A Right.

Q It appears that those prospectuses were

enclosed with that letter?

A Yes, they were.

Q Were they in fact sent to him?

A Yes.

Q What was the purpose of sending that to Dr. Foley?

MR. FRIED: I object to this, your Honor.

THE COURT: Overruled.

A In order to update Dr. Foley on what was happening with the firm, the changes that had occurred from the first prospectus to the second.

Q What type of changes had occurred during that period ?

A I'm sorry. I can't recall what these ones I marked in red were.

THE COURT: Will you tell us what kind of things you think they must have been?

THE WITNESS: Yes, I am sure they indicated a deterioration of our position from the first time.

THE COURT: In any event they related your financial situation?

THE WITNESS: That's right, sir.

Q Did you have any conversation or did you ever receive any reply or response from Dr. Foley?

A I don't recall, sir.

Q You don't recall whether he telephoned you and asked any questions concerning it?

A No, I don't.

Q Can you identify Exhibit VVV as a memorandum you received on March 20, 1970?

A Yes. I recall the memo.

Q Do you recall what you did in response or after receiving that memorandum?

A I talked with Mr. Coyle and he suggested that he would have our counsel call Mr. Feldman and find out what it was all about.

Q Did you, yourself, call Dr. Foley shortly after that date?

A That I don't know.

Q Let me show you Exhibit WWW, and ask if that refreshes your recollection?

A Yes. I remember the memorandum. I remember calling Dr. Foley to tell him about the Oklahoma financing. I don't know whether I could make a gratuitous statement here or not, but I would like to. There is a hiatus --

THE COURT: Do not make any gratuitous statements. Save it for out of cort.

THE WITNESS: I don't want to seem too stupid.

Q Have you read that memorandum now?

A Yes, sir.

Q I would like to ask you a few questions.

MR. REILLY: May I read this one to the jury, your Honor?

THE COURT: Yes.

MR. REILLY: This is a memorandum dated March 24, 1970 from Mr. Cambere addressed to Mr. Coyle, who was then chairman of the board of Hayden, Stone, an interoffice memorandum and it states:

"I talked to Dr. Foley today and told him in view of our Oklahoma financing there is no desire on our part to continue the discussions we were having with him. I thanked him for his patience and understanding. He replied that he was disappointed that he was not being associated directly with us. I told Dr. Foley that John Eggers had been in touch with Mr. Leonard Feldman that they discussed our picking up Mr. Feldman's legal bill in connection with these negotiations."

Q I believe it bears your initials, is that correct?

A May I see it again?

Q Yes (handing).

A No. That's Bud Coyle's initials.

Q But this is your memorandum.

A My memorandum. He just initialed it, I guess.

Q Do you recall anything that Dr. Foley said to you during that conversation, other than as reflected in the memorandum?

A Other than as reflected there, no.

Q Did you have any conversations at any time in 1970 with Dr. Foley other than the one reflected on Exhibit WWW?

A I don't recall.

Q Do you recall any conversations with Dr. Foley that concerned any payment?

A No, sir.

Q None whatever?

A No.

MR. REILLY: I have no further questions.

THE COURT: Thank you, Mr. Reilly.

Mr. Fried.

* * *

A That is correct, sir.

Q Mr. Cambere, were you ever an officer of the New York Stock Exchange?

A An officer?

Q Yes.

A No.

Q Were you ever on the Board of Governors of the New York Stock Exchange?

A No, sir.

Q Were you ever on the panel of arbitrators of the New York Stock Exchange?

A No, sir.

Q Your company is still subject to supervision and regulation by the New York Stock Exchange, is it not?

A Indeed it is.

MR. FRIED: I have no more questions.

THE COURT: All right.

Mr. Reilly.

REDIRECT EXAMINATION

BY MR. REILLY:

Q You mentioned on cross examination, Mr. Cambere, "additional considerations" that were requested by Dr. Foley after, I believe, October 8, 1969. Do you recall what those "additional considerations" were?

A Dr. Foley and I discussed the possiblity of our considering exchanging stock of his company tax-free for stock of Hayden Stone.

MR. FRIED: Your Honor, I submit, this is not material to this case. It is one of the elements of the deal they were trying to make in Hayden Stone.

THE COURT: Is this the conversation you had with Dr. Foley?

THE WITNESS: Yes, sir.

THE COURT: Overruled.

Q Do you recall anything else on that subject? I'm asking only for conversations you had with Dr. Foley.

A I told him that I would pursue this thing, that I was not in a position to change the original offer that is spelled out in one of the exhibits. The tax-free angle seemed to be in question as far as I was concerned. I asked our people to look into it.

Q Did they report to you the results of having looked into it?

A I beg your pardon?

Q Dir your tax people report to you their findings after considering it?

A This is rather dim, but it seems to me that in talking to our tax counsel they had some question as to

whether this tax-free treatment would hold up or not.

MR. FRIED: Your Honor, it seems to me this is wholly irrelevant.

THE COURT: Sustained.

I don't see what that has to do with our case.

Q Who made the proposal concerning the possibility of exchanging stock of Foley for stock of Hayden Stone? Was it made by Dr. Foley or by you?

A Oh, no, no.

Q By whom, sir?

A This was in concert with Dr. Foley and his counsel, Mr. Feldman.

Q Do I understand you correctly that the proposal was advanced by Dr. Foley and his counsel?

A Yes. Whether he did it through Mr. Feldman directly or not, I can't remember now.

Q Did you express to him at any time your view as to that proposal?

A I told him I would take a look at it but I did not think it would fly.

Q Did you tell him why you didn't think it would fly?

MR. FRIED: I submit, your Honor, this is not material to this case.

THE COURT: Sustained.

Q You were also questioned by Mr. Fried concerning a payment of a legal bill --

A Yes.

Q -- I believe of Mr. Feldman. Do you recall the amount of that bill.

A $20,000.

Q Do you recall giving your approval to payment of any sum to Mr. Feldman?

A No, sir.

Q You did not approve it?

A No, sir. This was done by Mr. Coyle.

Q Was this paid over your objection?

A No, sir.

Q Did you have any conversation with Mr. Feldman concerning that matter?

A Not that I recall, no.

THE COURT: I don't want the conversation with Mr. Feldman.

MR. REILLY: No further questions, your Honor.

THE COURT: Thank you very much, sir.

(Witness excused)

MR. FRIED: May I ask your Honor's indulgence for two minutes? I want to make one telephone call.

* * *

THE COURT: Thank you very much.

MR. BROOKS: And we will ask Mr. Nelson to assume the role of Mr. Rush on the witness stand.

MR. BROOKS: I note that the first session of Mr. Rush's deposition, which is the only sessio from which we will read, was taken on October 12, 1973.

"Q What is your name?

"A James J. Rush.

"Q Where do you live?

"A 31 Higbie Street, Valley Stream, New York.

"Q Mr. Rush, in order to try to speed over the preliminaries, What I would like to obtain from you on the record is a summary of your educational background and then your employment background up to the present.

"So, if you would start with your educational background and try to summarize it for me, I think that would be the quickest way to proceed.

"A Well, I am a graduate of St.John's University. I am also a certified public accountant, a member of the American Institute, and also the New York State Society.

"Q What kind of a degree did you receive from St.John's?

A B.B.A.

Q B.B.A?

"A Right. Bachelor of Business Administration.

"Q Did you take anyother formal education beyond St.John's?

"A No.

"Q Did you take any education in connection with your becoming engaged in the brokerage business, such as at The American Institute of Finance?

"A No, I did not.

"Q Would you now summarize your employment background?

"A I was employed by Haskins & Sells from 19 -- approximately 1943 to 1958. In 1958 I was employed by Hayden Stone & Company as their comptroller.

"In 1968 I transferred to Blair & Co. as comptroller.

"Q Was that from 1958 to 1968?

"A Yes. In 1970 I went to work for Estabrook & Company as their comptroller.

"Q Is that where you are now?

"A And I am presently there.

"Q When during this employment history did you receive your CPA, Mr. Rush?

"A When I was with Haskins & Sells.

"Q Do you recall the year?

"A '44. No, '48, I believe. Yes, 1948.

"Q While at Haskins & Sells, did you engage in a brokerage accounting in the course of your duties?

"A Yes. I did get involved in several audit examinations of brokerage houses. My main line was in connection with railroads and industies in the industrial area, but in the summertime we would normally be switched over to brokerage engagements.

"Q Was it through your experience at Haskins & Sells that you came to enter employment at Hayden Stone?

"A Yes.

"Q Was Hayden Stone a client of Haskins & Sells?

"A Yes.

"Q Would you describe your duties as comptroller of Blair & Co.?

"A Basically I was responsible for the accounting records at Blair and the reporting requirements, both internally and externally. By internally I would mean profit and loss statement, balance sheet, firm assets and liabilities, budgeting and forecasting.

"By externally I mean the reports required by the New York Stock Exchange and other Exchanges and other regulatory bodies.

"Q In the executive structure of Blair, to whom

would you report, if that is a --

"A To the president.

"Q Who was the president?

"A Jim Ramsey . James Ramsey was president at that time.

"Q Was there any employee immediately under you who assisted you and reported to you?

"A Yes, several.

"Q Can you tell me who they were?

"A Joe Pena was -- became comptroller after I moved into the treasurer's spot and he reported directly to me. The tax accountant, Mr. John Bazzuro, reported directly to me. And I had a man who handled the budget work, Jerry DeMalefitta. He also reported to me.

"Q What position did Benjamin Hepburn occupy during your approximately two years at Blair?

"A Well, when I first came to Blair, Ben was out ill. When he came back, he filled the operational spot for a few months. And then Blair & Co. estab lished what was called the office of the president and Ben was a member of the office of the president.

Basically, the operations of the firm reported directly to Ben.

"Q Are you presently a vice-president at Estabrook

as well as the comptroller?

"A Yes, yes.

"Q Your duties? Are they much the same at Estabrook as they were at Blair?

"A Similar, yes.

"Q Would that be true, the comparison between your duties at Estabrook and at Hayden, Stone?

"A Yes.

"Q Was the keeping track of and the reporting of Blair's position under New York Stock Exchange Rule 325 part of your duteis when you said that you took care of reporting to the Stock Exchange and SEC sources?

"A Yes.

"Q Can you fix the date, as best you can, of your first meeting with Dr. Foley and Mr. Luce?

"A Well, as I said before, it was early-- either early in January of late in December of 1969.

"Q Can you recall, if not in words, then in substance, the conversation you had with Dr. Foley at that first meeting, or if you can't pick out the first meeting, from the subsequent meetings?

"A I can't pick out the first or subsequent meetings. I did explain the condition of Blair and why we were looking for additional capital.

"Q Can you tell me what you said to Dr. Foley about the condition of Blair?

"A Well, I told him, as far as profitability was concerned, that we would probably, in the year 1969, lose as much as $9 million, and I also during that period asked -- I gave him a forecast of what the losses would be for the first six months of 1970.

"I pinpointed that it was probably five or six million.

"We further discussed the condition of the records of Blair & Co., and I indicated to him that we did have a serious recordkeeping problem because in November of 1969 the Blair records were converted to the Midwest System and the conversion was going rather poorly.

"Q Do you recall anything else that you told Dr. Foley at this first series or single meeting?

"A Well, he was apprised of the fact that we were having meetings" --

MR. FRIED: I object to the answer.

THE COURT: Let me see.

MR. FRIED: It says he was apprised. That calls for an operation.

THE COURT: No, I don't believe so. I construe that in answer to the question to mean I told him that.

MR. FRIED: That is what I said.

I have to try to understand what it means. It seems to me the jury can conclude that.

THE COURT: Read the question and the answer.

MR. BROOKS: (reading):

"Q Do you recall anything else that you told Dr. Foley at this first series or single meeting?

"A Well, he was apprised of the fact that we were having deals with the New York Stock Exchange and that the New York Stock Exchange had us under surveillance as far as lack of profitability and also because of the condition of our records.

"Q Did you discuss with him Blair's capital status under Rule 325?

"A Generally, yes.

"Q Can you recall what you told him?

"A Well, in my discussions with Foley I made it clear that we were probably in capital violation or very, very close to it, and we had difficulty making accurate computations because of the condition of the records.

"But the probability that we were in violation during this period was made known to Mr. Foley. Well, that was it. I can't think of anything else.

"Q At the time of this first meeting or series of

initial meetings, what results for the year 1969 had you -- hwat results for the year 1969 had you had reported to you?

"Mr. Rush, my question was meant to be limited to the first meeting you had with Dr. Foley since you said that you weren't sure and that the first meeting blended into perhaps one or two other meetings in and about late December or early January. That was the 1969 to 1970 year. I talked of a series of initial meetings. Have your answers been directed to that initial meeting or series of meetings?

"A Series of initial meetings.

"Q Right. And this is as distinguished from late February or March or the closing meeting on April 3, is it not?

"A That is correct.

"Q Do you recall my question, Mr. Rush, that was outstanding? I will state it again.

"A Will you, please?

"Q At the time of the initial meeting or series of initial meetings, as best you recall them, do you recall what the results for the 1969 year you had in your possession

"A Well, the results for November 30 were in my possession toward the January part of our meetings. We got a profit and loss statement as of November 30, 1969.

"Q And were you able, in this initial meeting or series of initial meetings, to communicate to Dr. Foley the results for the 1969 year through the end of November 1969?

"A Yes, I was.

"Q Do you" --

Then Mr. Foley's counsel interrupted. "I just want a little clarification on that, if you don't mind.

"Mr. Brooks: Yes.

"Mr. Weiss: Are you talking about a calendar year or fiscal year?

"Mr. Brooks: Well, let us find out what Blair w. on.

"Q Was Blair on a calendar year?

"A Blair was on a calendar year.

"Q In 1969, do you recall whether Blair operated at a profit for any of those 11 months in 1969 that you had the results available for that time?

"A From March 1969 on, I know definitely that we did not operate at a profit except for October of 1969, which generated a very small profit.

"Q You have testified before that you forecast a loss for the first six months of 1970. I believe you said in the amount of five to six million dollars.

"A Yes.

"Q Did you forecast that at the end of those six months there would be profitability?"

MR. FRIED: Your Honor, the prev ious question there, the witness originally said, "Whether we had a profit in January or February I can't say."

Then when he signed the deposition there was a change made.

THE COURT: I understand that.

You are free to point that out. Do you believe that the earlier version should be brought to the attention of the jury? Is that it?

MR. FRIED: Yes, your Honor.

(continued on next page.)

End 2A

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THE COURT: All right. Will you read both answers to that, Mr. Brooks, so they can understand it.

MR. BROOKS: Let me read the question and then both answers.

THE COURT: Right.

MR. BROOKS: Backing up to the prior question:

"Q In 1969, do you recall whether Blair operated at a profit for any of those eleven months in 1969 that you had the resust available for that time?"

Now the first answer:

"A From March 1969 on, I know definitely that we did not operate at a profit, and whether we had a profit in January or February I can't say."

And now the answer as Mr. Rush changed it when he read his deposition:

"A From March 1969 on I know definitely that we did not operate at a profit except for October of 1969, which generated a very small profit.

"Q You testified before that you forecast a loss for the first six months of 1970. I believe you said in the amount of five to six million dollars.

"A Yes.

"Q Did you forecast that at the end of those six months there would be profitability?

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"A No, no. This was in the context of how long it would take to turn Blair around. And my indication was that I couldn't see anything substantial before the next eight months on which we could probably have a loss of five to six million dollars.

"Q Right.

"Did you make any representation for the end of that six months and the beginning of the second half?

"A No, sir.

"Q Were you asked to forecast the second half of the 1970 year by Dr. Foley at this initial meeting or series of initial meetings?

"A Well, in the context of their questioning me as to how Blair was operating profitably and unprofitably and what did I think of the future prospects of the firm, yes, within those contexts.

"I mean, I can't remember Mr. Foley asking me specifically how Blair was going to do for the next six months. I volunteered that I could see in the next six months a loss of five to six million dollars within that context.

"Q I understand you to say you made no forecast for the second six months of 1970.

"A That's correct.

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"Q Did Dr. Foley or anyone on his behalf, such as Mr. Feldman, ask you to forecast the second six months of 1970?

"A Not to my knowledge.

"Q Did you have any data by which you could estimate the performance for the month of December 1969 at this meeting or series of initial meetings?

"A No specific data, no. Just my knowledge as to how the business was going and my general knowledge of the cost. I know that December would also be a loss.

"Q Did you tell Dr. Foley that?

"A Yes.

"Q Did you give him any idea of the size of the loss that you foresaw for the month of December?

"A Well, not specifically, but I did estimate that the loss for the year would be six to eight million dollars, and he during this period had a November profit and loss statement in his hands. He would know with very little difficulty, guess what the loss for December would be.

"Q The profit and loss statement?"

MR. FRIED: There was a motion made by counsel to strike out the last part of the answer and I join in that request.

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THE COURT: All right. The jury will disregard the statement about what Dr. Foley would know. That is just a conclusion by Mr. Rush.

MR. BROOKS: (Reading)

"Q The profit and loss statement which you testified he had in his hands, was that a statement for the month of November only as to the single month or a statement for the year 1969 through the end of the month of November?

"A Both.

"Q Both?

"A Yes.

"Q Do you recall what loss the firm had incurred through the end of the month of November?

"A It was around $7 million.

"Q At the initial meeting or series of initial meetings, I think you testified that Mr. Feldman might have been present.

"Did you have any better recollection of that?

"A Well, during this period I met Mr. Feldman. Of course, Mr. Foley introduced me to Mr. Feldman. We had lunch on one occasion and I met Mr. Feldman on another occasion at Mr. Foley's office on 42nd Street.

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"Q This is all during the late December-January 1969-'1970 period?

"A It may have gone into a later date also.

"Q Can you tell me how Dr. Foley intorduced Mr. Feldman to you?

"A As his attorney.

"Q Let us say, going up to the early February period, how many meetings did you have with Dr. Foley and/or Mr. Feldman?

"A I would say about six.

"Q Were there ever meetings that you had with Mr. Feldman absent Dr. Foley?

"A Mr. Feldman alone?

"Q Yes.

"A I can't recall any.

"Q What did Dr. Foley explain to you were his objectives in meeting with you?

"A Well, his objective was to make an investment in a brokerage firm, a member of the New York Stock Exchange.

"Q Did he say why he wanted to make an investment in a brokerage firm?

"A Well, no, I don't -- I can't answer that. Would you rephrase it again?

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"Q Well, did he ever tell you why he wanted to invest in a brokerage firm as opposed to raise horses or AT&T stock or some other investment?

"A Oh, my recollection is that he thought it was a timely -- it was timely to invest" --

MR. FRIED: I object to what he thought, your Honor.

THE COURT: Sustained.

MR. BROOKS: Your Honor, isn't the same assumption applicable that that was communicated to Mr. Rush?

THE COURT: In this case the word used, the word "thought",it seems to me is a little less clearly than that of communication. The other word was "apprised".

MR. BROOKS: Your Honor, I think if we continue on to the bottom of 19 and over to 20, it becomes clear that that was said to Mr. Rush and that it will not be clear what was said unless we may read this answer.

THE COURT: All right. Let me read that.

(Pause)

Why not go to that question on line 9, page 20.

MR. FRIED: There was a further objection made on the ground Mr. Brooks was leading the witness, and

I join in that objection.

THE COURT: That is overruled.

MR. BROOKS: Your Honor, if I have to read the question in the middle of page 20 beginning at line 9, I don't think it makes sense unless I can read the answer.

THE COURT: You have already read it. There was a move to strike it.

MR. BROOKS: I don't know that I got through the answer on page 19.

Go ahead. Read it all.

MR. BROOKS: Let's begin at line 7, page 19:

"Q Well, did he ever tell you why he wanted to invest in a brokerage firm as opposed to raise horses or AT&T stock or some other investment?

"A Oh, my recollection is that he thought it was a timely -- it was timely to invest in a brokerage house, because they were not doing so well. And my recollection of Mr. Foley was that he thought that --

"Q By that, do you mean that Dr. Foley said to you that it was a good time to invest?

"Did you mean when you said 'thought', that Dr. Foley said that to you or were you making some interpretations of your own?

A 1160

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"You may answer, Mr. Rush, if you are able.

"A No. In our general discussions of Blair, and the industry as a whole, Dr. Foley indicated that he thought it was at this time timely to invest in a member firm or brokerage organization.

"Q By 'indicated' do you mean he said to you?

"A Yes, yes. He also indicated to me that he had made a considerable amount of money in the past, not on -- by doing investing in highly profitable firms but so-called turn-around situations.

"Q Did he say that he considered the brokerage business a turn-around business?

"A I got that impression from him, yes.

"Q Did Mr. Foley describe to you the nature of the investment he was considering making in a brokerage firm?

"A Yes.

"Q Can you tell me what he said in this respect?

"A Well, he said he had approximately $4 million in securities that he would like to invest on some basis in a member firm."

THE COURT: We are going now to where?

MR. BROOKS: I am a little confused.

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THE COURT: The next excerpt you have there starts where? Is that page 29?

MR. BROOKS: Yes. I believe the next passage goes from 29, line 19, through 36, line 17.

THE COURT: All right.

MR. BROOKS: (Reading)

"Q After the last meeting at which the contract was being batted out and which you attended, but before the April 3rd closing, did you meet with Dr. Foley again?

"You may answer, if you are able.

"A Yes, I did, either the morning before the closing or a day or two prior to it. I just can't pinpoint the exact date.

"Q Do you recall where the meeting took place?

"A There was one meeting with Mr. Foley at his office, and I believe I met Mr. Foley on the afternoon of April 3rd. Whether it was in Blair's office or Foley's office, I'm not sure. And the contract was signed on April 3rd in the afternoon. I was not in attendance at the signing.

"Q So the meeting you refer to occurred before the signing, is that correct?

"A Yes.

"Q Was there one or two meetings that you are

A 1162

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talking about?

"A I believe there were two, rather close together.

"Q Let us take the first one. Can you differentiate between them?

"A Well, the meeting I believe, as best I can recollection, I had a meeting with Mr. Foley a day or two before the 3rd.

"Q Yes?

"A And I met with him in Blair's office or his office, I can't say which, the morning of April 3rd.

"Q Let us take the meeting one or two days before.

"Can you tell me what you said to Dr. Foley and what he said to you?

"A Well, I brought him up to date as best I could on the Blair situation, and Mr. Richardson was at that meeting. It was our intention to give Mr. Foley a letter from the Stock Exchange for his signature before this deal would go through.

"We also brought up to Mr. Foley's attention that the Exchange was requesting that if we were still in capital violation, that they suggested that we sell out the insiders, inside subordinated holders.

"Q Did you discuss the results for the 1969 year any more fully at this meeting than you had discussed

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them initially?

"A No.

"Q Did you discuss the results for December 1969 any more fully than they had been discussed before?

"A I can't recall.

"Q You referred to a letter which you gave to Dr. Foley at this meeting, is that correct?

"A That's right.

"Q I would like to show you an exhibit that we had marked in a prior deposition and ask you if that is the letter that you are now referring to.

"A Yes."

Skipping colloquy and going over to the top of page 33:

"Q Mr. Rush, what did you tell Dr. Foley about this letter which has been marked as Exhibit 13 in this trial, when you presented it to him?

"A Well, to the best of my recollection, I indicated that the Exchange wanted this letter signed by Mr. Foley before they would approve any additional capital of his going into Blair.

"Q What did Dr. Foley say to you when you presented the letter to him?

"A Nothing substantially. He had no objections

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to the letter.

"Q Did he read it?

"A I can't recall.

"Q Was Mr. Feldman present at this meeting?

"A Mr. Richardson was. Whether Mr. Feldman was present, I can't recall.

"Q Did Mr. Foley sign the letter at this time?

"A No, sir.

"Q Did he take it away with him?

"A Yes.

"Q Was there any discussion about the substance of the letter at this meeting?

"A Not to my recollection.

"Q The letter, which has been marked as Exhibit 13 in this trial, refers to in its second paragraph to a letter of March 10, 1970. I show you a copy of a letter dated March 10, 1970, which has been marked as Exhibit 15 at this trial, and ask you if you can identify that letter as the letter referred to in paragraph 2 of Exhibit 13 in this trial.

t2b

"A Yes.

"Q Mr. Rush, did you give this March 10, 1970 letter to Dr. Foley?

"A Mr. Foley saw that. Whether it was at -- either on the morning of the 3rd of April or just prior to it, I can't recall.

"Q Was it shown to him in your presence?

"A Yes, sir.

"Q Did you show it to him?

"A Yes, sir.

"Q Did he take a copy of it away with him at the time it was shown to him?

"A I'm not sure.

"Q Was Mr. Feldman present at the time it was shown to Dr. Foley?

"A I can't recollect.

"Q Was anyone else present other than you and Dr. Foley?

"A Well, if it was at the meeting at 42nd Street, Mr. Richardson was there. If it was at a meeting in Blair's office on the 3rd, I can't recollect.

"Q Are you positive that it was shown to Dr. Foley?

"A Yes.

"Q Are you positive that it was shown to Dr. Foley

before he signed the closing documents on April 3, 1970?

"A Yes.

"Q Was there any discussion about the March 10th letter at the time it was shown to Dr. Foley?

"A I can't recollect as to any general discussion.

"Q What was your purpose in meeting with Dr. Foley a day or so before April 3rd, as you have described?

"A Well, to bring him up to date with what the New York Stock Exchange had in mind prior to his signing the contract. I had to -- I presented to him the Exchange's wishes in that letter, in the Exhibit 13, and also to answer any questions he may or may not have had at that time.

"Q Did you give Dr. Foley any documents at the meeting that you think occurred on the morning or early afternoon of April 3rd?"

MR. FRIED: On page 36 there is a question: "Did you give Dr. Foley any other documents" --

THE COURT: I know that. But they have gone to the next page. I was confused by that, too. They are on page 37.

MR. FRIED: I think on 36 he says "Not to my recollection other than A and B." So they leave the thing hanging in the air.

THE COURT: I think Mr. Brooks is entitled to read what he wants, and he is reading at page 37. If

you want to read anything else, you may.

MR. BROOKS: (Reading)

"Q Did you give Dr. Foley any document at the meeting that you think occurred on the morning or early afternoon of April 3rd?

"A I believe that was the April 1st letter.

"Q Let me show you a letter dated April 1, 1970 that was marked as Exhibit 19-J at this trial, and ask you if you have seen that letter before.

A Yes, I have seen it before.

Q Did you give this letter to Dr. Foley?

"A I believe I did. I can't say definitely I didn't."

MR. TURETSKY: Can you read the correct portions?

(Pause)

MR. BROOKS: Your Honor, would you think it appropriate to indicate that in line 7 there was a change in the date from March 10th to April 1st?

THE COURT: Yes, although the answer seems to clear that up.

MR. BROOKS: We will read the first answer and then the answer as Mr. Rush changed it:

"Q Did you give Dr. Foley any documents at the

meeting that you think occurred on the morning or early afternoon of April 3rd?

"A I believe that was the March 10th letter."

And the second answer after the change was made by Mr. Rush:

"I believe that was the April 1st letter.

"Q Let me show you a letter dated April 1, 1970, that was marked as Exhibit 19-J at this trial, and ask you if you have seen that letter before.

"A Yes, I have seen it before.

"Q Did you give this letter to Dr. Foley?

"A I believe I did. I can't say definitely I didn't.

"Q When do you believe you did give it to him?

"A On the morning of the 3rd.

"Q Was there any discussion about this letter?

"A Not to my recollection.

"Q That you recall?

"A Not to my recollection.

"Q Mr. Rush, is there any doubt in your mind that you gave Exhibit 19-J to Dr. Foley at either of these two meetings slightly before the closing?

"A Which is 19-J now? The last one?

"Q Let me show it to you.

"A No.

"Q There is no doubt?

"A No.

"Q Did Dr. Foley take away with him from the meeting, at which you gave him Exhibit 19-J, a copy of Exhibit 19-J?

"A I don't recall that.

"Q Was there any further discussion about the capital position of Blair at the two meetings that you were now talking about slightly before the closing?

"A Not to my recollection, no.

"Q Exhibit 19-J refers to a capital deficiency of $3 million as of February 28, 1970. Let me show you that.

"Was that the most current capital position available to you at the time of these two meetings prior to April 3, 1970?

"A Well, in a general way, I knew that the situation had deteriorated from that three or that two million, I guess.

"Q Three million is what the letter says.

"A Yes.

"Q How much had it deteriorated?

"A About another million, because another month

had gone by.

"Q Did you advise Dr. Foley of that?

"A I indicated to him that the three million was probably on the low side, that something -- at present something around four million would be probably more appropriate.

"Q Did he say anything to you in return?

"A Not to my recollection.

"Q Did you provide Dr. Foley with any additional information about Blair subsequent to the closing?"

This is page 44, line 4:

"Q Did you provide Dr. Foley with any additional information about Blair subsequent to the closing?

"A Dr. Foley was on my list to receive the balance sheet and the P & L statements on a monthly basis. And as they were ready, I sent them to him. I believe he received, to my recollection, financial statements up through May, the end of May.

"Q What happened after May?

"A Well, we had quite a lead time between the time at the end of May and the time the statements were prepared because of the condition of the records.

"I would say that was probably sometime late in June. I can't exactly pinpoint when I sent it to him,

but in July I moved into Estabrook & Company.

"My best recollection" --

MR. FRIED: I move to strike that out.

THE COURT: His best recollection?

MR. FRIED: His recollection. All he can testify to is what he sent.

THE COURT: Right. Sustained.

"Q Let me show you a letter dated April 9, 1970 which appears to be signed by you and addressed to Dr. Foley, and an attachment entitled 'Consolidated Statement of Income and Expenses, December, 1969' and a second attachment entitled 'Balance Sheet of Blair dated December 31, 1969.'

"I ask you if you can identify this. I note that it is marked as Exhibit C at this trial.

"A Yes, I recognize it.

"Q Is that your signature?

"A Yes, it is.

"Q Did you send it to Dr. Foley?

"A Yes, I did.

"Q This April 9th letter has now been marked as Exhibit C, Mr. Rush. In the letter you stated that 'Enclosed is a statement of income and expenses for the year 1969 that we previously discussed.'

"What discussion were you referring to?

"A I have to go back. I had general discussions with Dr. Foley as to the results for the month of December and for the year to date, quite a bit earlier than the letter indicates. We weren't prepared to give him the financial statements because of the condition of the records, until a much later period. And that is basically what I was referring to.

"Q Had you discussed the substance of what is reflected in the balance sheet of December 31, 1969, which is also attached to your letter to Dr. Foley?

"A No. Basically we were talking about profit and losses.

"Q Is the written statement of income and expenses approximately the same as the data that you provided orally to Dr. Foley?

"A I gave him the November statement.

"Q Right.

"A And it would be -- the December statement would be in the same form.

"Q Well, what I am trying to get at, Mr. Rush, is that you told us that you discussed, prior to April 3rd, the results for December, but you were unprepared to give Dr. Foley the written statement because it had not been

prepared.

"What I want to know is, when you did give him the written statements, were the results reflected on the written December statement substantially the same as you had orally advised him of?

"A Yes. I would say yes.

"Q There were no surprises on the written statement?

"A No.

"Q Did Dr. Foley say anything to you after you wrote the letter of April 9, 1970 concerning the enclosures therein?

"A No.

"Q Did Mr. Feldman?

"A No.

"Q Did Dr. Foley ever ask you for any written statements or information to be provided orally prior to April 3rd that you did not supply to him?

"A Not to my knowledge.

"Q In addition to the profit and loss statements that you have told us you furnished to Dr. Foley subsequent to the closing and your April 8th -- I believe that should be 9th, your Honor -- "April 9th letter, did you furnish him with any other written information about the condition

of Blair?

"A Well, as we got the profit and loss statements available at the end of each month, I would send Dr. Foley a copy.

"Q Right.

"A As we progressed.

"Q Mr. Rush, let me show you what has been marked as Exhibits B in evidence at this trial and Exhibits LLLL, MMMM, NNNN for identification at this trial and which are entitled, respectively, 'Statement of Income for February 1970, March 1970, April 1970 and May 1970,' and ask you if these are the statements that you have described as having been furnished to Dr. Foley by you subsequent to the closing.

"A To the best of my recollection, Mr. Foley got a copy of each of those statements.

"Q Are those the ones that you have testified to?

"A Yes."

At this time, your Honor, I would like to offer in evidence LLLL, MMMM and NNNN as those exhibits identified by Mr. Rush.

THE COURT: All right.

MR. FRIED: I object to these on the ground that even on the testimony of Mr. Rush they were given to Dr. Foley after the closing.

MR. BROOKS: Your Honor, I thought we had an agreement on that kind of an objection.

THE COURT: I do not know what you mean by "an agreement." We had an agreement that Mr. Fried had a continuing objection on that ground and I have ruled that it is not sufficient to prevent the admission of the evidence.

It is overruled.

(Defendants' Exhibits LLLL, MMMM and NNNN for identification were received in evidence)

MR. BROOKS: Your Honor, Mr. Reilly reminded me that Exhibit B in evidence was offered subject to connection. I think this testimony of Mr. Rush connects it.

THE COURT: What is Exhibit B?

MR. BROOKS: The same kind of income statement for the month of February 1970.

"Q Did you discuss with Dr. Foley before the closing in April of 1970 the $2 million temporary contribution to capital made by Mr. Ireland?"

I am reading from page 56, line 19:

"A Before the closing?

"Q Yes.

"A Yes.

"Q Can you recall when you did discuss that with Dr. Foley?

"A Well, Ireland's investment was considered temporary, and in the construction of the formula, which was part of the Foley contract, consideration that the Ireland investment was only temporary and would be taken out was taken into consideration.

"Q And when you use the term 'formula', can you tell me what you are referring to?

"A I am referring to the formula that would give Mr. Foley the right to withdraw his capital from Blair & Company.

"Q Did you have any discussions with Dr. Foley prior to the closing as to whether his investment would or would not put Blair in capital compliance under Rule 325?

"A Well, our discussions were that his investment plus other changes that we would make in capital would put us in compliance. I am specifically thinking about the liquidation of inside subordinated holders. That would

increase our capital plus what Mr. Foley put in would definitely bring our capital into compliance.

"Q Mr. Shapiro" -- that was the court reporter taking the deposition-- "would you read back the whole answer and try to omit the interruptions so that we can hear the answer together?

"(The question and answer were then read)

"Q What you have just related and has been read back as your answer, Mr. Rush, was that told to Dr. Foley by you?

"A To the best of my knowledge, yes.

"Q What was the amount that would have been added to capital by liquidation of the inside subordinated accounts?

"A Several million dollars.

"Q Was that amount disclosed by Dr. Foley to you?

"A Specifically, I don't believe we had disclosed that specific capital amount to him, no.

"Q When did you consider the capital starting to get tight?"

Page 109, line 24:

"A Well, when we were talking about an eight to one or ten to one ratio, which we had at one time, I

didn't consider it tight. When it got to be 16 or 17 to 1, I had to monitor more closely.

"Q When was that?

"A The fall of 1969.

"Q Mr. Rush, you said that it started to become 16 to 1 when?

"A In the fall of 1969.

"Q Which would be about the beginning of the fall or the latter part?

"A I would say the middle part, November-ish, around that time.

"Q November?

"A Yes."

THE COURT: 199 now, is that right?

MR. BROOKS: Yes, 199, line 15.

"Q Did you tell Dr. Foley at that first meeting what you believed the future prospects for Blair to be?

"A I can't recall telling him at the first meeting.

"Q No?

"A It was very possible, but I can't recall it.

"Q Do you recall ever telling him what you thought the future prospects would be?

"A Yes."

THE COURT: By the way, are these questions still by you?

MR. BROOKS: No, your Honor. Mr. Weiss, Mr. Fried's predecessor, Mr. Foley's attorney, is asking these questions now.

THE COURT: All right.

MR. BROOKS: Let me start again:

"Q Did you tell Dr. Foley at the first meeting what you believed the future prospects for Blair to be?

"A I can't recall telling him at the first meeting.

"Q No?

"A It was very possible, but I can't recall it.

"Q Do you recall ever telling him what you thought the future prospects would be?

"A Yes.

"Q What did you tell him?

"A Well, I told him basically that he was looking at a copmany that had a $9 million loss for the year 1969. All the figures weren't in, but that would be my best guess. And that as far as I could see, with the conditions of the records that we were in, we probably wouldn't

turn it around until the end of June of this year. And I would expect to lose, during that period, anywhere between five and six million dollars.

"This was no guarantee as to how long the New York Stock Exchange would allow us to continue doing business.

"Q You told him that also?

"A I did.

"Q Did you tell him what would happen after June?

"A No.

"Q And he didn't ask?

"A No. I can't recall that he asked.

"Q He didn't ask. So what you painted for him was a picture of approximately $15 million in losses in a one and a half year period, ending June 30, 1970, a very serious bookkeeping problem which could not be solved in the near future, and a situation where the company was not -- either not in capital compliance or just marginally in capital compliance; is that correct? Is that what you are telling me?

"A Yes.

"Q You told him all of those things?

"A This I told him, all these things. Not

necessarily at the first meeting, though. I want to make that very clear."

That completes our reading, your Honor.

At this time I would like to offer in evidence Exhibit OOOO, which we have discussed in chambers.

THE COURT: I have forgotten what it is.

MR. BROOKS: It is a letter from Mr. Rush to Kevin Thomas Duffy of the SEC.

THE COURT: Is that the document Mr. Fried agreed to?

MR. BROOKS: Yes.

THE COURT: All right.

(Plaintiffs' Exhibit OOOO for identification was received in evidence)

MR. BROOKS: May I read the one-sentence letter?

THE COURT: Yes.

MR. BROOKS: This is a letter to Mr. Kevin Thomas Duffy, Regional Administrator of the SEC, dated February 13, 1970, signed by Mr. Rush.

"Gentlemen: Enclosed please find a copy of our financial statement as of September 26, 1970."

And there was enclosed two copies of Exhibit 2, the financial statement for Blair & Company as of

* * *

"Q Do you know whether or not the securities in the subordinated account at Blair & Company had increased in value during that period?

"A I couldn't say.

"Q Do you know whether or not any addition infusion of subordinated moneys was made in Blair & Co., Inc. aside from the Ireland money during that period?

"A No. I don't know."

Page 146, Line 9.

"Q Do you know whether any amounts were included in the subordinated borrowings figure of $22,092,278 in the Blair & Co., Inc. statement of financial condition as at September 26, 1969, which were not approved by the New York Stock Exchange?

"A No, I am not apprised of that.

"Q Had you been apprised of it, would you have brought it to the attention of somebody?"

MR. BROOKS: I object to the form of the question there,your Honor.

THE COURT: Sustained.

MR. FRIED: Page 161.

"Q What was the condition of Blair & Co. Inc.'s books and records as at September 26, 1969?

"A Well, the auditors found unlocated differences

and they also found security in which we couldn't find an owner on. The magnitude of both sides was somewhere in the area of $2 million. So I would say that there was room for improvement of those records at the audit date.

"Q Which means the September 26 date?

"A Right.

"Q When you say there was some room for improvement, would you say that they were materially inadequate at that time?

"A No.

"Q No?

"A I wouldn't say materially inadequate, no.

"Q Who would Arthur Young discuss adjusting entries with in the company?

"A It depends on what type of an adjustment we were engaged in. If it was an operation manager, we would discuss it with Mr. Hepburn. If it was strictly an accounting adjustment, he would probably discuss it with me.

"Q What do you mean by "an operational adjustment'?

"A Say an out of balance condition on the record.

"Q Of what?

"A An out of balance condition on the record. If they couldn't resolve the out of balance condition, they would bring it to Mr. Helpburn's attention.

"Q Isn't that an accounting question?

"A Not necessarily, in the brokerage business.

"Q Isn't the question as to whether or not the company has a liability an accounting question?

"A I think whenyou are talking about a liability, it is an accounting question.

"Q Or whether there is a contingent liability?

"A If it is substantial and material, it is an accounting question."

Page 173. These are questions being asked by Mr. Weiss.

"Q Did anybody ever report to you the number of items in the unlocated securities and securities whose ownership could not be determined that wre unresolved at the end of the audit period in 1969?

"A No. I got no such report.

"Q Do you know how many unresolved items there were at the beginning of the audit?

"A In number? I don't know.

"Q The transactions that were involved in that audit were transactions prior to the conversion to the Midwest System, is that correct?

"A That's right.

"Q So that any problems in resolving balances

at that point had nothing to do with the Midwest System?

"A Not at that point.

"Q At least in the Blair Division?

"A That's right.

"Q So is it fair to say that when you spoke about bookkeeping problems arising in the conversion to the Midwest System, you were not talking about these unresolved differences as at September 26, 1969?

"A Yes. I was not talking about that.

"Okay?

"Q And just to be sure now, did you testify this morning that you informed Mr. Foley that there were bookkeeping problems at Blair?

"A Yes.

"Q Did you inform Dr. Foley of that?

"A Yes.

"Q What did you attribute these problems to when you informed Dr. Foley?

"A Principally the conversion to the Midwest System.

"Q Is it fair to say that the Midwest System did not improve the company's bookkeeping situation?"

THE COURT: There is another question, I think.

MR. FRIED: (reading).

"Q Let's take between November, when you say you stated to use it, and April 3, 1970.

"A That's right. Why did we stop at April 3? We continued on the Midwest System after that and it got worse and worse.

"Q It got worse until you left.

"A Well, when we got liquidated, that is when I left.

"Q YOu say that part of the reason for the liquidation was the bookkeeping problem?

"A Mostly.

"Q Mostly?

"A The best I think that the liquidation was came about primarily because of the conversion to the Midwest System. That is my opinion."

Page 179.

(continued on next page.)

3B

2 "Q When you say that in your opinion the bookkeeping
3 problems arising from the Midwest System was a substantial
4 part of the reason for the liquidation of Blair, are you
5 saying that Blair could not reasonably obtain accurate
6 financial figures from its books and records during the
7 period when the Midwest System was handling these books
8 and records?
9 "A Yes.
10 "Q Did you ever tell anybody that the bookkeeping
11 problems were being remedied?
12 "A No.
13 "Q Do you recall ever telling that to Dr. Foley?
14 "A Not specifically, no.
15 "Q Did you tell him that they were becoming increas-
16 ingly poor?
17 "A I probably didn't tell him increasingly. I
18 told him, as far as the records were concerned, we are in
19 bad shape and the Midwest System was the principal reason
20 why he, Mr. Foley -- why we needed capital from Mr. Foley
21 or anyone else who was interested in contributing to the
22 firm.
23 "Q Let me understand this. How does the performance
24 of the Midwest System cause the requirement of additional
25 capital?

"A Well, let me try to give you an example. We had -- you know what the aggregate indebtedness is, I presume.

"Q Well --

"A Aggregate indebtedness is the liabilities of the firm, basically all the liabilities, which include bank loans, customer accounts.

We were running bank loans at approximately 30 to 35 million dollars before we went on the system, the Midwest System. VEry shortly after we went on the Midwest System, that figure jumped to 60, 70, $80, 000.

"Q Million dollars?

"A Million dollars. I am sorry. A good part of it was due to improper recordkeeping, fails, both receive and deliver, which normally would be seven to eight million, jumped to 30, 40 million dollars. I am just giving you a rough idea. Of course they went up on both sides, but going up on both sides, they aggravated our capital situation because they substantially increased our aggregate indebtedness.

"Q When did the fails reach the 35 or 40 million dollars?

"A Very shortly after conversion.

"Q Would you say it happened in the month of November?

"A I would say it happened in the month of November or December, either one.

"Q But it was immediately apparent, is that what you are saying?

"A Immediately apparent is the word.

"Q Were these facts communicated by you to the New York Stock Exchange?

"A Yes, indeed. The New York Stock Exchange had auditors right in my office and they knew what the situation was.

"Q On the fails?

"A On the fails on the bank loans.

"Q Who were the auditors from the New York Stock Exchange? What were their names?

"A Well, I worked through Mr. Deignan, who was our man at the Exchange to talk to, and I have forgotten the names of the auditors or consultants that they sen t over.

"They did send over quite a crew. Some of those had Midwest experience and were helpful and others were just auditors who would take the figures and try to verify our capital computations. The names escape me. They may come a bit later.

"Q How long did they spend there?

"A Well, we had the Stock Exchange auditors in Blair from December 1969 up very closely to the time of liquidation.

"Q ON a pretty consistent basis?

"A Well, on an in-house basis.

"Q All the time?

"A Yes.

"Q They had an office there?

"A They had at least one man there all the time.

"Q WEre they given an area to work?

"A They were given a desk in the accounting area.

"Q Who usually occupied that seat for the Stock Exchange?

"A Say that again?

"Q Who was the individual who occupied the inner-most function?

"A His name won't come to me. I know him very well, but his name won't come to me.

"Q Did you have daily conversations with him?

"A Hourly, I would say.

"Q Hourly?

"A Yes.

"Q Did he have access to every facet of the company?

"A Absolutely.

"Q And all the personnel?

"A Absolutely.

"Q And all the personnel?

"A Right.

"Q Was he given all the reports issued by the company?

"A Yes."

(continued on next page.)

"Q Prepared by them?

"A I don't know if he precisely got every report. But I know he got a substantial amount. Anything he asked for, he got.

"Q Did you give him a lot of this information?

"A My assistant, Joe Penna, gave him most of the information and worked very closely with him. There was a period of time when neither the examiners nor the firm could make any really good sense or headway out of the records.

"Q What period of time was that?

"A Well, shortly after the conversion and the early December period, and it continued right up until the time we were liquidated.

"Q Do you recall having any conversations about the condition -- of this bookkeeping condition?

"A I didn't directly. I believe Mr. Ramsey did. He sought their aid. He had the special management people in who were familiar with the Midwest System to help us.

"Q Do you remember when they came in?

"A I believe in January-February period.

"Q Do you remember the names of the individuals?

"A No, I don't remember their names.

* * *

Tk 5B

BY MR. REILLY:

Q Dr. Foley, I understand your testimony to be that aside from Exhibit 2, the ARthur Young certified financial statement, that you did not receive any other financial documents from Blair on or prior to the closing on April 3, is that your testimony?

A That's the best -- I am sure that I received no other certified documents.

Q Did you receive any uncertified documents?

A Well, I cannot -- to the best of my knowledge I did not, Mr. Reilly.

Q Isn't it a fact that you did receive a recent computation of net capital prepared by Blair dated as of February 28, 1970, prior to April 3?

A May I see the document that you have in mind, Mr. Reilly?

MR. REILLY: I would like to hand to the witness Exhibit H. I believe it is also Plaintiffs' Exhibit 92A.

(Pause.)

A I don't recall whether I saw this or not, Mr. Reilly. I do not deny having seen it, but I do not recall having seen it.

Q Do you recall having represented to the New York Stock Exchange in your letter of April 3 that you had

been furnished --

MR. FRIED: I object.

A That was not my letter, Mr.Reilly.

Q I beg your pardon?

A I signed the letter, but I did not prepare it.

THE COURT: We are all aware of the fact that he signed that.

THE WITNESS: I said I signed it, but I did not prepare it, and I had never seen it before that afternoon.

THE COURT: I understand you do not deny having seen the exhibit just shown to you before April 2, but you don't know whether you did or not?

THE WITNESS: Thatis right, your Honor.

Q Showing you both the April 3 letter, Exhib it 13, and also Exhibit L, the computation, does that refresh your recollection whether that computation is the one referred to in the letter of April 3 that you signed?

A No, it does not.

Q It doesn't refresh your recollection?

A No, sir. Because I paid very little attention to this letter, Mr. Reilly, when I signed it. I have already testified what I was told.

Q Was it your view that the Stock Exchange would

pay very little attention to it when it received it?

A Not at all. It was my view that the Stock Exchange would not take me in.

MR. REILLY: I move to strike the latter part of that answer.

THE COURT: Overruled.

Q I believe you also said this morning that you were not told that Blair's losses for 1969 amounted to approximately $9 million and the estimated losses for the first five or six months of 1970 were approximately five million.

A That's for sure. I was not so told.

Q Isn't it a fact, Dr. Foley, that your lawyer, Mr.Feldman, attended a number of meetings with Blair representatives between the period January to April 1970?

A That's my understanding, yes, sir.

Q And these were meetings which you did not also attend?

A There were some he attended at which I was not present, yes, sir.

Q Do you know whether at any of the meetings that Mr.Feldman attended, when you were not pr esent, he was told that Blair's losses for 1969 amounted to $9 million?

A To the best of my knowledge, he was not so told.

Q Do you know that?

THE COURT: Well, of course he doesn't know --

A How could I know something at which --

Q That's all right. You answered my question.

A That is a philosophical impossibility, Mr. Reilly.

MR. REILLY: Your Honor, I think the witness should be --

THE COURT: Mr. Reilly, I think you are arguing with him by asking him whether he knows something that took place at a meeting that he wasn't at, as to which he doesn't claim he does know anything.

The purpose of your questioning is to question him about what other witnesses have said since he has been on the stand.

Q You said in your rebuttal testimony that you were not furnished any figures as to profit or loss for either 1969 or the first part of 1970. My question is, did you inquire as to the amount of any losses?

A I beg your pardon, Mr. Reilly. I said I was furnished that one exhibit, Exhibit 2, I believe.

Q Exhibit 2. I understand. The balance sheet?

A That's right.

Q I am talking now about profit or loss.

A Yes.

Q Isn't it fair to say that you were told by Mr. Rush, prior to April 3, that Blair had lost money and was continuing to lose money?

A Yes. He told me that they were in a loss position. That's right, sir.

Q And isn't it also true that you never asked them whether they were losing a dollar a day or a thousand dollars a day?

A I assumed, the way he talked --

Q Excuse me.

THE COURT: Just answer. Did you ask him how much?

THE WITNESS: I do not recall having asked him how much, no, sir.

Q When for the first time did you learn that the Amicon securities would not be acceptable or the financing arrangement with respect to that stock would not entitle the Amicon securities to capital credit?

MR. FRIED: Your Honor, I submit Mr. Reilly ought to be held to rebuttal, as I have been.

MR. REILLY: I assure your Honor I am merely laying the foundation for what was a specific question

asked by Mr. Fried.

THE COURT: All right.

A I learned that for the first time when Mr. Rush or Mr. Richardson called me to tell me that they were returning the Amicon stock, I think subsequently did. And to the best of my recollection that took place either late April or it could have been early May. My best recollection would be very late April.

Q You testified this morning in response to a question of Mr. Fried that you had been told by, I believe Mr. Rush, at least someone at Blair, that your securities would put Blair in compliance with the net capital rule. Do you recall that testimony?

A That's right, sir.

Q Did anyone at Blair say that your securities, excluding the Amicon stock, would put Blair in capital compliance --

A When I was told --

Q -- on or prior to April 3?

A When I was told that --

MR. REILLY: Excuse me, your Honor.

THE WITNESS: I have to answer his question.

THE COURT: When were you told that?

THE WITNESS: Oh. Would yourepeat the question?

THE COURT: No. When were you told that the receipt of your capital would put Blair in compliance?

THE WITNESS: I would say it was probably in late February or early March of 1970.

THE COURT: The reference then was to the receipt of all the capital that you were planning to lend, is that right?

THE WITNESS: That's the point exactly, which I --

THE COURT: What was the reference?

THE WITNESS: The reference was to a total deposit of securities ranging between two and three million dollars.

Q In other words, it might require --

A It did not include the Amicon --

THE COURT: You mean it specifically did not?

THE WITNESS: The number, your Honor, the figures, the range, two to three million dollars, did not include the Amicon stock. Had the Amicon stock been included, it would have gone over three million.

MR. REILLY: I move to strike that, your Honor.

THE COURT: Dr. Foley, let me get this straight.

Who did you have a talk with who told you that Blair would be in compliance if it received two to three

million dollars from you?

THE WITNESS: Messrs. Rush and Richardson in particular.

THE COURT: And did they tell you that they meant to exclude Amicon or are you just saying --

THE WITNESS: No. Your Honor, the Amicon stock was not mentioned to them at that time.

THE COURT: All right. Well, then, you can't say that it included Amicon. What you mean is the range --

THE WITNESS: It did not include Amicon.

THE COURT: You can't say that either. Myabe they were thinking of a million dollars worth of Amicon --

THE WITNESS: They had never heard of Amicon at that point in time.

THE COURT: All right. Then you were proposing at that time, is this what you are saying, to lend two to three million dollars?

THE WITNESS: Yes, sir.

THE COURT: And in your own mind you knew that you were not going to lend the Amicon?

THE WITNESS: I knew the Amicon was not included in the figure, yes, sir.

THE COURT: How did you know that?

THE WITNESS: Because I knew roughly the value of the securities that I could deposit.

THE COURT: Did youtell what you were going to lend or not?

THE WITNESS: Yes. Mr. Luce had asked me for a list of the securities.

THE COURT: And that list -- did you give him a list?

THE WITNESS: Yes.

THE COURT: And the list did not include it?

THE WITNESS: That's right.

THE COURT: All right.

BY MR. REILLY:

Q Will you tell me why, in Plaintiffs' Exhibit 9, which is the collateral agreement, there is a typed list of securities giving the name of the company on the left-hand column, the number of shares on the right, and the third list of securities is Amicon Corporation, 27,250 shares?

A Because they later indicated, Mr. Reilly, an inter est in getting as much collateral in the loan or note as possible.

Q If they had later indicated, why was this included as part of a document which you signed on April 3?

A The Amicon was mentioned by that time. But the original proposal to them that we had made, that I made on behalf of my group, was for a total deposit of securities in the range of two to three million dollars.

Q But wouldn't it be fair to say that this list of securities set forth as part of Plaintiffs' Exhibit 9, which was executed by you on April 3, were the securities as to which it was anticipated Blair would become in capital compliance?

A I don't know. That is a legal question about which I cannot answer, Mr. Reilly.

Q Did you hear the testimony in this case since your earlier testimony, that the valuation placed on the Amicon stock was something like $965,000?

MR. FRIED: There is no valuation on this schedule here.

A I don't know what the valuation was.

THE COURT: He is talking about testimony, not what was on that.

THE WITNESS: I don't know what the valuation was.

THE COURT: Whatever the testimony is, it is.

THE WITNESS: To my knowledge, it was never evaluated.

Q Haven't you ever evaluated it?

A No,sir, I have not. There is no market for that stock, to this day.

Q Did you have any discussion with anyone at which you discussed the valuation of $35 a share?

A No,not to my knowledge.

Q Did you have any discussions with Mr. Feldman concerning his possibly obtaining a loan on the basis of that stock of roughly $35 per share?

A I have no recollection of -- about any number, any value, Mr. Reilly. I know that there was some -- Mr. Richardson had talked with Mr. Feldman, according to what Mr. Feldman told me, about the possibility that they would get a loan, if a bank would give a loan against it. But no figure was ever mentioned to me and I had no part in any such discussion.

Q You were also questioned this morning by Mr. Fried as to whether Mr. Rush told you that the $2 million loan by Mr. Ireland was subject to withdrawal. I believe you said no, you had not been so informed.

A I didn't even know he had such a loan, let alone that it was subject to withdrawal.

Q And you were also questioned as to whether you had been informed by Mr. Rush that Mr. Ireland had other

loans or investments in Blair some of which may have been short term?

A That is correct.

Q And I understood your testimony to be that you were not so advised.

A That is correct.

Q Were you informed at any time by anyone at Blair that Mr. Ireland never withdrew a penny of the $5 million investment that he had in Blair and he lost it all?

A No one ever talked to me about that.

Q I show you again Exhibit 13, which I believe is your April 3, 1970 letter to the Exchange, which I understand y ou have testified you did not see prior to April 3.

A Prior to the late afternoon or early evening of April 3, that's right.

Q Had you ever seen a letter similar to that?

A I had never heard of it.

Q Similar in form?

A Never heard of it.

Q Perhaps addressed to the Exchange, but concerning a different member firm?

A No.

Q Like the firm of Hayden Stone?

A Never heard of it. Mr. Cambere never showed me nor discussed such a letter with me.

Q How about Mr.Feldman? Did he?

A No.

Q I would like to read one sentence from Defendants' Exhibit OOO and see if this will refresh your recollection. It is a letter of August 8, 1969, from Hayden Stone to Mr. Feldman.

THE COURT: Is it in evidence?

MR. REILLY: Yes, your Honor.

THE COURT: All right.

Q It encloses a number of documents which are described on the first page and on the second page it states:

"I will also send you a letter to be signed by Mr. Foley confirming his knowledge of our current conditions,which is required by the New York Stock Exchange."

My question now is, does that refresh your recollection as to whether you discussed any such letter with Mr. Feldman prior to --

A It does not. After hearing that, I am sure I had no such discussion with Mr. Feldman.

Q Did you have a different draft or earlier draft of the document before you, Exhibit 13, prior to April 3?

A As I said, no, no. I had never heard of the existence of this inform or in type or in kind, Mr. Reilly. It was something completely new to me.

I had never heard its name mentioned or its use mentioned before.

Q Even with respect to HaydenStone you hadn't?

A That is correct. With respect to Hayden Stone or any other agency or organization in this world.

Q Mr. Cambere never discussed this kind of letter with you?

A He never did. That is correct,sir.

Q You were here in court when he testified?

A I so heard him.

MR. REILLY: Just one last question, your Honor.

Q I believe you testified that Mr Rush is a defendant in the case you brought against Mr. Vanderbilt and others.

A That is my understanding, yes, sir.

Q Is M.. Richardson?

A Not according to my understanding.

MR. REILLY: No further questions, your Honor.

THE COURT: Ladies and gentlemen, we will go to lunch.

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Due and timely service of ONE copies of the within APPENDIX is hereby admitted this 7TH day of APRIL 1977.

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Attorneys for APPELLEE
NEW YORK STOCK EXCHANGE

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AMERICAN STOCK EXCHANGE

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